ADVISORY OPINION 1975-124

Status of Copies of Federal Election Reports Filed
With the Various Secretaries of State; Effect of
Federal Election Laws on Florida Election Laws

This advisory opinion is rendered under 2 U.S.C. §437f in response to a request by Robert L. Brewster. The request was published as AOR 1975-124 in the Federal Register on December 31, 1975 (40 FR 60166). Interested parties were given an opportunity to submit written comments. One comment was received.

The request deals with the status of copies of Federal election reports filed with various Secretaries of State, the effect of Federal election laws on Florida election laws, and the use of volunteer workers who receive U.S. Social Security funds.

Mr. Brewster first inquired whether it is illegal for anyone to use for political fundraising purposes the information contained in the campaign contribution reports submitted by various candidates for public office and filed with the various Secretaries of State pursuant to 2 U.S.C. §439. Section 438(a) (4) of Title 2, United States Code provides as follows:

> It shall be the duty of the Federal Election Commission to make the reports and statements filed with it available for public inspection and copying . . . . Provided, that any information copied from such reports and statements shall not be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose. (Emphasis added.)

The Commission concludes that the quoted language prohibits across-the-board the solicitation of contributions by utilizing information copied from campaign reports and statements. It matters not whether such reports and statements are those maintained by the Federal Election Commission or those maintained by State officials. The foregoing conclusion is supported by the fact that the information filed with the Secretaries of State itself is in the form of a "copy" of the documents required to be filed with the Commission, the Secretary of the Senate, or the Clerk of the House. 2 U.S.C. §439(a). By its own nature, therefore, the information contained in the State-filed documents is within the scope of 2 U.S.C. §438(a). To otherwise allow such use of that information merely because it is copied from reports maintained by State officials would clearly circumvent the purpose of the law.

The Freedom of Information Act would not affect the restriction on the use of information contained in campaign reports and statements simply because such information is made public. Nor would State laws affect the Federal prohibition of the use of that information. (See below.)

It was inquired whether it is legal to use for fundraising purposes the Alphabetical Listing of 1972 Presidential Campaign Receipts published by the General Accounting Office in 1973. The information contained in that listing was obtained from the reports of receipts and expenditures filed with the Office of Federal Elections (within the General Accounting Office) pursuant to Sections 303(a) and 304(a) of the Federal Election Campaign Act of 1971. Section 308(a)(4) of that Act (2 U.S.C. §438(a)(4)) prohibited the use of such information for soliciting contributions for commercial purposes. The Federal Election Campaign Act Amendments of 1974 while transferring the responsibilities of the General Accounting Office to the Federal Election Commission, did not alter the restrictions upon the use of information copied from the records filed with the appropriate authority. Furthermore, the 1974 Amendments provided specifically for the transfer of copies of "all appropriate records, documents, memorandums, and papers" from the General Accounting Office to the Federal Election Commission. Section 208(a) of the Federal Election Campaign Act Amendments of 1974 adding Section 315(b) to the 1971 Act (88 Stat. 1263 at 1286). The intent of Congress to retain the restriction upon the use of information contained in reports previously filed with the General Accounting Office, but now maintained by the Commission, seems clear. Consequently, the Commission concludes that the Alphabetical Listing of 1972 Presidential Campaign Receipts cannot be used in any manner prohibited by 2 U.S.C. §438(a)(4).

Mr. Brewster inquired whether a Federal candidate who is required to have a committee (2 U.S.C. §432(f)(1)) must also file his own separate report. According to 2 U.S.C. §434(a)(1), both the committee supporting the candidate and the candidate himself must file a report of receipts and expenditures. However, in accordance with 2 U.S.C. §436(b)(1), the Commission approved a proposed regulation* which provides for waiver in certain instances of the personal duty of a candidate to file reports of receipts and expenditures. The Commission may not grant the waivers until the Disclosure Regulations now before Congress are approved.

It was also inquired whether it is legal to use "testimonial fundraising lists" for fundraising purposes. Federal law only prohibits the use for solicitation of contributions of information copied from reports and statements required to be filed by Federal candidates and committees. 2 U.S.C. §438(a)(4). A testimonial fundraising list, provided that it is not derived from or copied from reports and statements filed by candidates or committees, would not be a source of information used to solicit contributions which is prohibited by Federal law. Whether State law prohibits the utilization of such lists for fundraising purposes is a matter to be determined by the State involved.

---

* Section 101.3 of the Proposed Rules on Disclosure of Federal Campaign Funds generally relieves a candidate of the duty to personally file reports of receipts and expenditures if such candidate files FEC Form 2 or a letter and states that he or she will transfer all contributions personally received to his or her principal campaign committee and will not commingle personal and political funds. The proposed rules were transmitted to Congress on December 3, 1975. Copies are available at the Commission.

Mr. Brewster inquired whether several provisions of Florida law would be nullified by Federal law. Generally, the extent to which Federal law preempts State law is stated in 2 U.S.C. §453:

> The provisions of [the Federal Election Campaign Act of 1971, as amended], and of rules prescribed under [the] Act, supersede and preempt any provision of State law with respect to election to Federal office.

In addition, Section 104 of the Federal Election Campaign Act Amendments of 1974, Pub. L. 93-443, 88 Stat. 1263 at 1272, states:

> The provisions of Chapter 29 of title 18, United States Code, relating to elections and political activities, supersede and preempt any provision of State law with respect to election to Federal office.

The Commission refers Mr. Brewster to Opinion of Counsel (OC) 1975-14 which was published in the Federal Register, (40 FR _____, January, __1976). It deals in depth with the applicability of the above provisions to specific State statutes. The Commission, having noted OC 1975-14 without objection, hereby refers all persons who have inquiries as to whether a particular State election statute has been preempted by Federal law to that opinion. The Commission notes that, as in this instance, such inquiries do not ordinarily raise an issue as to whether "any specific transaction or activity by [any individual holding Federal office, any candidate for Federal office, or any political committee would constitute a violation of [chapter 14 of Title 2, United States Code], of chapter 95 or chapter 96 of the Internal Revenue Code of 1954, or sections 608, 610, 611, 613, 614, 615, 616, or 617 of title 18, United States Code." 2 U.S.C. §437f. Therefore, Mr. Brewster's request will be answered with an opinion of counsel rather than in this opinion.

Finally, Mr. Brewster inquired whether he may use as "voluntary workers" two persons who receive U.S. Social Security funds. Section 431(e)(5)(A) of Title 2, United States Code, and 18 U.S.C. §591(e)(5)(A) both provide that the term "contribution" does not include "the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee". The receipt of Social Security funds does not constitute "compensation" within the meaning of the preceding provisions. If the services provided by the workers referred to are gratuitous in nature, they need not be reported nor otherwise treated as contributions. No other provision within the Commission's purview appears to prevent your use of such volunteer workers. 2 U.S.C. §§437d(a)(9), 437f(a). The Commission notes that Mr. Brewster indirectly refers to 18 U.S.C. §604 pertaining to solicitation from persons on relief, and 42 U.S.C. §2943(c) which pertains to political activity of Community Action Agencies, and their officers and employees. These particular statutes are not under the jurisdiction of the Commission. The Commission refers Mr. Brewster to the Justice Department for clarification of the applicability of these statutes to his activities.

This advisory opinion is issued on an interim basis pending promulgation by the Commission of rules and regulations or policy statements of general applicability.