14 SEP 1976

AO 1975-132

Jan W. Baran, Esquire
Legal Counsel
National Republican Congressional
Committee
512 House Office Building Annex
Washington, D. C. 20515

Dear Mr. Baran:

This is in response to your letter of October 6, 1975, which requested a supplemental advisory opinion to AO 1975-3, 40 FR 36093 (August 18, 1975). Specifically, you requested that the Commission reconsider its opinion in AO 1975-3 since you concluded that it was based in large part on a now outdated version of the Commission's proposed office accounts regulation.

As you know, the Supreme Court held in Buckley v. Valeo, 424 U.S. 1 (1976), that the Commission as then constituted lacked the power to issue advisory opinions. From the date of that decision on January 30 until reconstitution on May 21, 1976, no advisory opinions could be issued. Moreover, since May 21 the Commission has been required to give priority to the consideration of proposed regulations which must be submitted to Congress under 2 U.S.C. §438(c). The Commission submitted its proposed regulations to the Congress on August 3, 1976, and thus we are able to respond at this time. We apologize for the unavoidable delay in responding to your request.

The Commission's opinion in AO 1975-3 included a response to your inquiry as to whether the payment by a multicandidate political committee of the cost of tabulating responses to questionnaires sent under the frank is a contribution chargeable against the limitations established by 18 U.S.C. §608. (As a result of the Federal Election Campaign Act Amendments of 1976, the substance of this section was transferred to 2 U.S.C. §441a(a).) The Commission concluded that the answer to this inquiry was conditioned on its first answering "the question . . . [of] whether such activity is a contribution or expenditure within the general definition of 18 U.S.C. §591(e) and (f)." The opinion, however, never directly addressed this question and instead relied on the fact that the Commission's proposed regulations treated the definition as applicable to these activities. Accordingly, the opinion declared that the cost of the tabulation would be subject to all appropriate limitations.

On further consideration, it is the opinion of the Commission that this portion of the opinion in AO 1975-3 is no longer applicable in light of the more limited definition of contribution which appears in §100.4 of the proposed regulations. Notice 1976-38, 41 FR 35932, 35934 (August 25, 1976). Accordingly, the cost of tabulating

responses to questionnaires sent under the frank will not be considered to be a contribution in the absence of a showing that the tabulation was made for the purpose of influencing an election. So long as the tabulation was provided by the multicandidate committee for the purpose of aiding a Representative in the performance of his or her legislative and representative duties, and was not made for the major or primary purpose of influencing a Federal election,[1] it will not be considered by the Commission as subject to the contribution limitations of the Federal Election Campaign Act of 1971, as amended. However, since payment of the costs would be made by a political committee it would have to be reported by the committee as a disbursement. See §104.2(b) of the proposed regulations.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Sincerely yours,

(signed)_____
Vernon W. Thomson
Chairman for the
Federal Election Commission

[1] See U.S. v. Nat. Com. for Impeachment, 469 F. 2d 1135, 1141 (2d Cir., 1972); Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 637, n. 24 (1976).