

ADVISORY OPINION 1975-44

Request of Socialist Workers 1976 National Campaign Committee

This advisory opinion is issued pursuant to 2 U.S.C. §437f in response to a request for an advisory opinion submitted by Ms. Andrea Morell, Treasurer of the Socialist Workers 1976 National Campaign Committee (hereinafter referred to as the Committee) and published in the Federal Register of September 3, 1975 C40 FR 40677). Interested persons were given an opportunity to submit written comments pertaining to the request. No comments were received.

The request raises several administrative as well as interpretative questions under the Federal Election Campaign Act of 1971, as amended, (the Act).

1. The first question concerns the individual contribution limitations of 18 U.S.C. §608(b)(1). The Committee specifically asks the following:

Does this limit apply separately to primary, run-off (if any), and general elections? Section 608(b) (5) indicates that the limitation is \$2,000 for presidential candidates but fails to give any time limitation. Is it for instance, \$1,000 between the primary and the general election? If the limitation does apply separately for candidates contending in primary and run-off elections, does it also apply separately for candidates contesting only the general election?

The request indicates that the Committee has been designated as the principal campaign committee of the presidential candidate of the Socialists Workers Party; this opinion is issued in that context.

The contribution limitations in 18 U.S.C. §608(b)(1) apply separately to each election. The term election as defined in 18 U.S.C. §591(a) includes (1) "a general, special, primary, or run-off election" and (2) "a convention or caucus of a political party held to nominate a candidate." Under 18 U.S.C § 608(b)(5), all elections held in any calendar year for the office of President (except a general election for such office) are considered to be one election for purposes of the contribution limitation in 18 U.S.C. §608(b)(1). Thus, under a literal reading of §608(b) it would appear that since the presidential candidate of the Socialists Workers Party is already nominated, all post-nomination contributions relate to the general election and are accordingly limited to \$1,000 under §608(b)(2).

However, in this case, as in the past, the Commission is concerned to construe the provisions of the Act in a manner consistent with Constitutional requirements, regardless of a candidate's party affiliation or independent status. See AOs 1975-11 (40 FR 42839, September 16, 1975) and 1975-53 (40 FR 40678, September 3, 1975). The primary election and convention process is a procedure through which major parties typically determine their candidates for the general election. The procedure for presidential candidates of minor parties, however, differs in that most states have a separate petition process whereby such candidates may qualify for the general election ballot. Accordingly, for the purpose of applying the limitations in 18 U.S.C. §608, the Commission will view the petition process required of the presidential candidates of the minor parties as the equivalent of the primary elections and convention process of the major party candidates. Therefore, an individual may contribute \$1,000 to a presidential candidate of a minor party for his or her petition effort and \$1,000 to the candidate for his or her general election effort.

Since the dates pertaining to petition qualification vary from State to State, the Commission considers it necessary to prescribe a uniform date when, for purposes of 18 U.S.C. §608(b), the petition process ends for minor party presidential candidates. The Commission concludes that the prescribed date should be when the presidential nominee last selected before the general election is nominated by a national nominating convention of a major political party. It is noted that this date coincides with the date when an eligible minor party presidential candidate, entitled to public funding before the general election, may properly expend or obligate public funds "to further his election * * *", 26 U.S.C. §9002(11), (12).

2. The Committee's second question concerns the limitation [2 U.S.C. §437b(b)] of \$100 on petty cash purchases and transactions. The Committee asks whether:

this means that no check to the order of "cash" can be made for over \$100? What does a campaign committee do in a situation where a candidate or representative of a candidate is out of town and requires emergency funds in excess of \$100? What does a committee do in the case where its checks are unacceptable as a means of payment for a certain vendor, for example, the U.S. Postal Service?

Under 2 U.S.C. SS 437b, each candidate and political committee must designate a national or State bank as a campaign depository and maintain a checking account therein. All contributions received by the committee must be deposited in this account and all expenditures, other than petty cash expenditures, must be made by check drawn on this account. A political committee may also maintain a petty cash fund from which it may make expenditures not in excess of \$100 to any person in connection with a single purchase or transaction.

The Commission is of the opinion that checks drawn to make expenditures must be payable to a named person and not simply to "cash." Checks drawn to the order of cash are payable to the bearer and are equivalent to cash; under 2 U.S.C. §437b(b) cash expenditures may not exceed \$100 to any person in connection with a single purchase or transaction.

3. The Committee further asks for clarification of the reporting requirements (10-day pre-election and 30-day post-election reports) when candidates are not contesting special, primary, or run-off elections. Under the Commission's proposed regulations, a presidential candidate's principal campaign committee is subject to monthly reporting requirements in an election year. Section 105.4(f) provides:

(f) Monthly reporting.

(1) In any calendar year in which a general election is held (not including a special election to fill a vacancy), each Presidential candidate who makes contributions or expenditures in more than one state, his or her principal campaign committee and any other authorized committee, shall file the reports required by this Part 105 by the 10th day of the month in each month except January, November, and December of such calendar year, instead of pre- and post-primary reports and quarterly reports. These reports shall include all receipts and disbursements as of the last day of the month immediately preceding the month in which the report is filed.

(2) The pre- and post-election reports required to be filed under paragraph (b) relating to a general election, the 4th quarterly report required to be filed under paragraph (d), and the reports required to be filed prior to an election under paragraph (e), must still be filed.

4. The Committee asks what constitutes a "debt" or "obligation" itemizable under parts 11 and 12 of the reports, Does this refer to long-term debts and obligations of say, 60 days, or something else?"

The Commission is of the opinion that a debt or obligation for purposes of the Act is anything owed to or by the Committee whether or not legally enforceable. An example of a debt owed to a political committee which would be itemized under part 11 is a written pledge for a contribution made by a contributor.^{1/} The Committee should

^{1/} The Commission notes parenthetically that in the case of a written pledge, the obligation could be unilaterally ended at any time, which would extinguish the reporting requirement with regard to that obligation.

report debts or obligations it owes under part 12. The Committee should report its debts or obligations of \$500 or less, payment for which must be made within 60 days, either as of the time payment is made or when the 60 day time for payment has expired, whichever is earlier. Debts over this amount or debts for which payment is not due within 60 days must be reported as of the time the debt is incurred. The Commission has approved and submitted to the Congress regulations pertaining to the reporting of debts and obligations.

5. The Committee has raised the question of whether non-principal campaign committees have to be authorized in writing by the candidate.

Under the proposed disclosure regulations, any political committee authorized by a candidate to receive contributions or make expenditures must be authorized in writing by the candidate. Contributions to such a committee are contributions to the candidate. 18 U.S.C. §608(b)(4).

If a political committee solicits or receives contributions or makes expenditures on behalf of a candidate and is not authorized in writing by such candidate to do so, the committee must include a notice on the literature and advertisements published in connection with the candidate's campaign a statement that the committee is not authorized by the candidate and that such candidate is not responsible for the activities of the committee. 2 U.S.C. §432(e).

Expenditures by an authorized political committee are charged against the candidate's expenditure limitation under 18 U.S.C. §608(c). "Expenditures on behalf of a candidate" by a political committee which has not been authorized in writing will still be charged against the candidate's expenditure limitation. An expenditure is made on behalf of a candidate if it is made by (1) "an authorized committee or any other agent of the candidate for the purpose of making any expenditure" or (2) "any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure. 18 U.S.C. §608(c)(2)(B)(i) and (ii). A committee's unauthorized expenditure relative to a clearly identified candidate is not an expenditure on behalf of that candidate within the meaning of §608(c)(2)(B); such an expenditure is limited to \$1,000 per candidate during a calendar year. See 18 U.S.C. §608(e).

6. The last question is "[w]hat constitutes 'affiliation' and 'relationship' of committees?" In accordance with the Commission's proposed disclosure regulations (approved by the Commission on November 25, 1975, and subsequently transmitted to the Congress) an affiliated committee includes:

- a. All authorized committees of the same candidate.
- b. Multicandidate committees other than national, state, or subordinate state party committees, and the House and Senate campaign committees each party, which are under common control.

A "connected organization" includes "any organization which is not a political committee but which organized or financially supported the registrant." See §100.14(c) and §102.2(b) of proposed disclosure regulations.

This advisory opinion is issued on an interim basis only pending the issuance of rules and regulations and policy statements of general applicability.