

ADVISORY OPINION 1975-53

Application of Limitations on Contributions and Expenditures
To Nomination By A Petition Effort

This advisory opinion is rendered under 2 U.S.C. §437f, in response to a request, published on September 2, 1975 (40 FR 40678), concerning the applicability of the limitations on contributions and expenditures, contained in 18 U.S.C. §608, to the process by which a candidate is nominated for a ballot position in a general election via a petition effort. Written comments were invited but none were received.

The request raises three separate questions. First, the request asks whether the limitation on expenditures contained in 18 U.S.C. §608(c)(1)(C) applies to an independent candidate for the Senate who seeks to qualify for a ballot position in a general election through the gathering of petition signatures instead of seeking nomination in the party primary. The Commission is of the opinion that the limitations contained in such section do apply to a petition effort for nomination in the same manner in which they apply to candidates seeking nomination through a primary or other party selection route. 18 U.S.C. §608(c)(1)(C) applies "in the case of any campaign for nomination for election by a candidate for the office of Senator" and is not limited by its terms to a primary election. Rather, the word campaign, as used in section 608(c)(1)(C) refers to the process by which the candidate seeks to qualify for a ballot position, in a general election. Because the Commission sees a need to delineate the time when such a process ends and the general election campaign begins, it adopts the following guideline. With respect to individuals seeking a ballot position in a general election for Federal office without nomination by a party, a primary election shall be deemed to have occurred on the day prescribed by applicable State law as the last day to qualify for a position on the general election election ballot or the date of the last major party primary election whichever is later. (See Proposed Disclosure Regulations, §100.6(b)(2) adopted by the Commission on November 25, 1975). If a candidate makes expenditures during the "primary" period which are directed toward the general election, (such as buying television time to be used prior to the general election but after the close of the "primary" period) such expenditures will be charged against the candidate's general election expenditure limitation. Similarly, if a candidate incurs expenditures after the "primary" period which are directly related to his or her petition effort, these expenditures would be considered "primary" expenditures.

Second, the request asks whether, assuming an independent candidate is considered for purposes of the spending limitations in the same manner as a candidate for nomination in a primary, there are any restrictions on the funds used to qualify by petition other than those imposed by the Federal Election Campaign Act of 1971, as amended. It is the Commission's opinion that any expenditures made for the purpose of qualifying a candidate for election to Federal office through a petition effort may be made in the same amounts and in the same manner as funds expended to qualify for nomination by running in a primary election. The Commission is currently in the process of drafting regulations

which will provide direction as to how to allocate the cost of materials to the primary and general election efforts, respectively.

Third, the Commission is requested to rule on the extent to which surplus funds not expended in a petition effort may be carried over into the general election campaign subsequent to the qualification for the general election ballot by the candidate.

The Commission is of the opinion that surplus funds remaining from a primary or petition campaign may be carried over and used in the general election so long as the general election limits on spending established by 18 U.S.C. §608 are not exceeded. However, contributions ostensibly earmarked for the primary election or "primary" period in the instant case, which are received by the candidate after the primary election (period) will be treated as contributions for the general election unless at the time the contribution is received the amount of debts from the primary campaign exceeds the balance on hand in the primary election account. Only those post-primary contributions needed to retire the primary debt will be treated as made with respect to the primary election.

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