

ADVISORY OPINION 1975-60

Raffle as Fundraiser for Federal Candidate

This advisory opinion is issued pursuant to 2 U.S.C. §437f in response to a request for an advisory opinion submitted by Salvatore Gionfriddo, Chairman, Citizens for Moffett, and published as AOR 1975-60 in the September 18, 1975, Federal Register (40 FR 43166) and supplemented by a request published in the October 20, 1975, Federal Register (40 FR 49066). Interested parties were given an opportunity to submit written comments relating to the request. No comments were received.

The original request asked generally whether a raffle contemplated by supporters of Congressman Toby Moffett, which would be conducted in compliance with the laws of the State of Connecticut and featuring the sale of tickets to the general public, would be legitimate under the Federal Election Campaign Act of 1971, as amended (hereinafter FECA). Specifically the request asked:

- a. Would such a raffle constitute a legal fundraising activity under the FECA?
- b. Can a labor union serving under State law as a raffle sponsor, promote and operate the raffle?
- c. Can union volunteers contribute their time without remuneration during their normal time off from regular employment to promote such raffle activities?
- d. If a labor union acts within State laws as the raffle sponsor and accordingly turns over the net proceeds to Congressman's campaign fund, should such funds be reported by the Congressman as the contributions of the union or as the contributions of individuals whose names and addresses were recorded at the time they purchased raffle tickets.

Mr. Gionfriddo, in further communication with the Commission, has indicated that a Democratic Town Committee has been designated as the official sponsor of the raffle. Since that portion of this request pertaining to union participation is moot, Mr. Gionfriddo has requested the Commission to issue an advisory opinion only on the first question of this request.

It is the opinion of the Commission that a raffle properly conducted under applicable State law would not violate the FECA. The Commission notes, however, that several provisions of Federal law specifically pertain to lotteries. The Postal Service has jurisdiction over 39 U.S.C. §3005. The several sections of Chapter 61, Title 18, United States Code specifically pertain to lotteries. The Commission refers Mr. Gionfriddo to the Department of Justice which has jurisdiction over the entire chapter for any clarification of the applicability of this chapter to the fundraising raffle.

The Federal Communications Commission has concurrent power with the Justice Department to enforce one of the sections of this chapter, 18 U.S.C. §1304.

In the supplemental request published in the October 20th Register, Mr. Gionfriddo raised two additional questions. The first of these questions is

[i]f a raffle ticket purchaser chooses to pay by check, must the check be written to the sponsoring organization which is likely to be a union or Democratic Town Committee, or to the benefiting organization, Citizens for Moffett, or may it be written to either?

Since the union will not be a sponsor, this question is limited to whether the check should be made out to the Democratic Town Committee or to Citizens for Moffett. Because the raffle is a fundraising event for Congressman Moffett, the checks should be made out to Citizens for Moffett. If the checks are to be made out to the Democratic Town Committee, all solicitations must expressly and clearly state that the contributions or raffle ticket purchases will be used by Congressman Moffett's campaign. In addition, the drawer or contributor should, wherever possible, indicate clearly on the face of the instrument or otherwise direct that the proceeds of the check are to be considered a contribution from the drawer to Citizens for Moffett. In either situation, the Democratic Town Committee would be considered an intermediary or conduit. The Committee would have to report the original source and the intended recipient of such contribution to the Commission and to the intended recipient. 18 U.S.C. §608(b)(6).

In order to avoid any confusion, the Commission suggests that the checks be made out to Citizens for Moffett and that any checks made out to the Democratic Town Committee be returned with the request that they be issued payable to Citizens for Moffett. The second question raised in the supplemental request is as follows:

[i]f the net total of funds raised exceeds the total debt of Citizens for Moffett, can Citizens for Moffett retain the surplus; if it cannot, should the surplus funds be retained by the sponsoring organization, returned to ticket purchasers, or disbursed in some other fashion?

If the purpose of this fundraiser is to retire pre-1975 campaign debts, the Commission sets forth the following guidelines which supplement the general procedures discussed in response to the previous question. Contributors purchasing tickets in excess of \$100 must expressly earmark the contribution (as by notation on a check) for initial use to retire pre-1975 debts. If the contributions are so restricted, they will not be subject to the contribution limits of 18 U.S.C. §608(b). If any excess funds remain after liquidation of the pre-1975 debts, they may be used in any manner consistent with

2 U.S.C. §439a. Moreover, if the donors giving in excess of \$100 provide specific written authorization, excess funds remaining after the repayment of the pre-1975 debt may be turned over to the 1976 campaign fund. Specific authorization is not required from persons contributing less than \$100. A turnover of excess funds is subject to the limits of 18 U.S.C. §608(b). The Commission refers Mr. Gionfriddo to Advisory Opinion 1975-82 for a detailed discussion of fundraising to retire pre-1975 campaign deficits. (40 FR ____).

If the purpose of the fundraiser is to retire a campaign debt incurred with respect to an election after January 1, 1975, the surplus may be retained by Citizens for Moffett. Contributions to retire debts incurred for elections after January 1, 1975, are subject to the limitations of 18 U.S.C. SS 608(b).

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

Date: December 12, 1975

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