

AO 1975-70

Honorable George M. O'Brien  
House of Representatives  
Washington, D. C. 20515

Dear Mr. O'Brien:

This refers to your request for an advisory opinion, AOR 1975-70, concerning the application of the Federal Election Campaign Act of 1971, as amended, to a proposed telephone campaign on your behalf conducted by a labor union and directed to its members residing in your congressional district.

As you know, the Supreme Court during the period in which your request was pending, issued its opinion in Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612 (decided January 30, 1976). The Court held that the Commission as then constituted lacked the power to issue advisory opinions. From the date of that decision until reconstitution of the Commission on May 21, 1976, no advisory opinions could be issued. We apologize for the unavoidable delay in responding to your request.

The Federal Election Campaign Act Amendments of 1976 and the legislative history of those amendments reaffirm that a labor organization can communicate with its members and their families on any subject at any time and use general union funds to defray the expenses of those communications. There is no limitation on the amount that may be expended for this purpose nor are such expenses required to be reported as a contribution or expenditure by the separate segregated fund of the labor organization or by your principal campaign committee. 2 U.S.C. §441b(b)(2)(A). However, in a change made by the 1976 Amendments, it is now provided in 2 U.S.C. §431(f)(4)(C) that costs incurred by a labor organization which are "directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed \$2,000 per election, be reported to the Commission . . ." by the labor organization which does the communicating. I enclose a copy of a regulation recently approved by the Commission which further elaborates on this subject.

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The foregoing 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