

ADVISORY OPINION 1975-72

Application of Contribution and Spending Limits in 18 U.S.C. §608 to Presidential Candidate's Travel for Party Purposes

This advisory opinion is rendered under 2 U.S.C. §437f in response to a request by a Republican National Committee (hereinafter RNC). The request was published as AOR 1975-72 in the Federal Register for September 24, 1975 (40 FR 44041). Interested parties were given an opportunity to submit written comments relating to the request. Numerous comments were received by the Commission.

The RNC request stated that:

"National political parties . . . are charged with the ongoing responsibility of promoting voter registration and creating voter recognition of party identity and ideology, without reference to an individual candidate or election. A large measure of this function is performed by the President, Vice President and their aides on behalf of their National and State parties

....

When the President, Vice President, and their aides are engaged in political activity on behalf of their National, State or Local political parties, the R.N.C. assumes the cost of their travel and transportation, advance men expense, telephone and telegraph cost and the cost of receptions incidental to those activities."

The RNC indicated that in 1975 it had allocated the sum of \$500,000 to meet the costs noted supra, and that as of September 1, 1975, it had received or paid \$309,000 in bills against this allotment.

The request asked specifically whether ". . . the . . . Federal Election Campaign Law of 1974 . . . (has) . . . application to . . . (a) . . . national party's payment of expenses incurred by the President of the United States, the Vice President of the United States, and their aides while engaged in national, State, or local party promotional activities?"

It is the opinion of the Commission that a political party may designate any person to represent them at a legitimate party promotional event. If such person is a candidate under the Federal Election Campaign Act, as amended, the Commission will presume after January 1 of a presidential election year, for reasons noted infra, that the candidate's appearances benefit his candidacy directly and must be treated as subject to the provisions of the FECA, as amended. The Commission is also of the opinion that candidate appearances at a legitimate party promotional event, prior to January 1 of a presidential election year are party building in nature and are not inherently intended to influence the candidate's nomination for election to Federal office. Therefore, these

appearances are not subject to the limitations of the FECA, as amended, as long as they are in compliance with the guidelines set forth herein.

Since President Ford is a candidate within the meaning of 2 U.S.C. §431(b)(2) and 18 U.S.C. §591(b)(2), the question to be answered here is whether a political committee's payment to a candidate for his expenditures in connection with an appearance at a legitimate party promotional activity is "made for the purpose of influencing the nomination . . . of (the candidate) to Federal office . . ." (See 2 U.S.C. §431(f), 18 U.S.C. §591(f).)

The FECA implicitly recognizes the role of political parties in our electoral process and encourages stronger and more competitive, major, minor and new parties through the payment of Federal monies.

The report of the Senate Rules and Administration Committee issued to accompany S. 3044 (Report No. 93-689) expresses this point:

"(the) Committee agrees that a vigorous party system is vital to American politics and has given this matter careful study Parties will retain their essential nonfinancial responsibilities in electoral politics [P]arties will play an increased role in building stronger coalitions of voters and in keeping candidates responsible to the electorate through the party organization [P]arties will continue to perform crucial functions in the election apart from fundraising, such as registration in voter turnout campaigns, providing speakers, organizing volunteer workers and publicizing issues. Indeed, the combination of substantial public financing with limits on private gifts to candidates will release large sums presently committed to individual campaigns and make them available for donation to the parties, themselves. As a result, our financially hard-pressed parties will have increased resources not only to conduct party wide election efforts, but also to sustain important party operations in between elections."

See also, comments of Rep. Bill Frenzel in Congressional Record, H. 10333, daily ed., October 10, 1974).

While there is no question, given the nature and functions of the RNC, that such appearances can and do promote party-building, there is also little doubt that when these appearances occur in proximity to an election in which the President is a candidate, the appearances may be reasonably construed to confer a benefit to the President's own candidacy. Cognizant of these realities, the Commission will divide President Ford's party appearances into two categories: those occurring before January 1 of the election year, and those occurring after January 1 of the election year. The post January 1 appearances will be presumed to be candidate-related and will be governed by the relevant portions of the FECA, as amended. Those before January 1 will be presumed not to be candidate-related. The Commission's conclusions may be rebutted upon a

showing, *inter alia*, that the solicitations for the party event, or the setting of the event, or the remarks made by candidates who were invited to attend were "for the purpose of influencing the nomination for election, or election, of [that candidate(s)] to Federal office." (See 2 U.S.C. §§431(c) and (f); 18 U.S.C. §591(e) and (f).) Moreover, the Commission presumes that in the period prior to January 1, 1976, the RNC will accord equitable treatment to all of its presidential candidates.

In situations where it can be shown that President Ford, after the date he became a candidate,¹ attended an event which did not, under the preceding criteria, fulfill legitimate party building purposes, the Commission assumes that the RNC will treat its expenditures on behalf of the President as contributions in kind, subject to the \$5,000 limitation in 18 U.S.C. §608(b)(2). In the event this limit is exceeded, the President Ford Committee should repay the RNC for costs incurred on behalf of the President and then list such repayments as expenditures, subject to the provisions of 18 U.S.C. §608(c).

The Commission notes that the matching payment period for the payment of public funds to properly qualified Federal candidates begins on January 1 of the presidential election year (see 26 U.S.C. §9037(b)). At the very least, the Congressional determination that the public payments shall become available on January 1 supplies a persuasive suggestion that Congress believed that date to mark the commencement of increasingly serious presidential campaigning which will consume an increasing portion of the candidate's time. This justifies the view that almost all public activities engaged in thereafter are candidate-related.

The opinion expressed herein is distinguishable from AO 1975-13 (appearing in 40 FR 36747) in which the Commission indicated that "once an individual has become a candidate for the presidency, all speeches made before substantial numbers of people are presumed for the purpose of enhancing his candidacy." When the, statement is examined in context--namely as a response to a question as to whether 18 U.S.C. §610 prohibited a presidential candidate from receiving corporation-paid travel expenses for a speaking engagement before a local chamber of commerce, it becomes clear that it is applicable only to an appearance which in contrast to the present situation, serves directly to benefit the candidate. This is not the case with regard to party appearances prior to January 1 of the election year, where such appearances are not accompanied by any express communication evidently directed to advancing a candidate's chances for election.

Although the views expressed in this opinion are specifically applicable to the RNC, as the requesting party herein (see 2 U.S.C. §437f), they would also be applied by the Commission to presidential candidates other than President Ford.

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.

¹ Since President Ford, on June 19, 1975, authorized a political committee to receive contributions and make expenditures on his behalf, at that time he became a candidate within the meaning of 2 U.S.C. §431(b)(2) and 18 U.S.C. §591(b)(2).

Commissioner Harris dissents.

Date: November 26, 1975

(signed)

Neil Staebler
Vice Chairman for the
Federal Election Commission