

ADVISORY OPINION 1975-81

Status and Reporting requirements of Freedom of Choice, Inc.

This advisory opinion is rendered under 2 U.S.C. §437f in response to a request on behalf of Freedom of Choice, Inc. The request was published in the Federal Register on October 20, 1975 (40 FR 49066) and interested parties were given an opportunity to submit written comments pertaining to the request. None were received.

The request concerns the limitations on contributions and expenditures and the registration and reporting requirements applicable to Freedom of Choice, Inc. a non profit corporation which has been organized for the purpose of assuring that, "in the 1976 presidential election. . . The American voters, in each state, have the option of supporting an independent conservative alternative slate of electors for the offices of President and Vice-President."

Specifically, the request asks whether (1) such an organization is a political committee as defined by the Federal Election Campaign Act of 1971, as amended (the "Act") and (2) assuming the answer to inquiry (1) is affirmative, what must such an organization do to comply with the Act.

The Commission is of the opinion that Freedom of Choice is a political committee which must register with and report to the Commission under the Act. The request states that the subject organization will receive contributions and expend funds for the purpose of assuring that an independent conservative alternative slate of electors will appear on the ballot in the 1976 presidential election in every state in the United States. Additionally, its Articles of Incorporation state that "the Corporation is organized for political purposes including . . . the following specific purpose (a) To secure ballot positions in each of the fifty (50) states for candidates for the office of President and Vice President of the United States." The Commission concludes that such activities clearly place an organization within the definition of "political committee" set out in 2 U.S.C. §431(d).

The term political committee is defined in 2 U.S.C. §431(d), as "any committee, club, association or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding \$1000." The term "expenditure" includes payments of money or anything of value made "for the purpose of influencing . . . the election of any person . . . to the office of presidential or vice presidential elector." Hence, any amounts expended by Freedom of Choice to assure, in the 1976 presidential election, the appearance on the ballot in each state of an "independent conservative alternative slate of electors for the offices of President and Vice President," would clearly be statutory expenditures which, if anticipated to exceed \$1000, would constitute Freedom of Choice, Inc. a political committee subject to the reporting and registration requirements of the Act.

The fact that the organization does not presently support named candidates for Federal office or for elections is not particularly relevant for determining its status as a political committee. It is the Commission's opinion that if Congress had desired to restrict the "purpose test" of 2 U.S.C. §431(e) and (f) to particular Federal candidates, it would have limited coverage to the specifically defined word "candidate" [2 U.S.C. §431(b)] and certainly would not have qualified "person" by inclusion of the word "any."

With respect to the second part of the request, it is the Commission's opinion that, at such time as Freedom of Choice anticipates receiving contributions or making expenditures to influence a Federal election in an aggregate amount exceeding \$1000 for a calendar year, such organization shall be deemed a political committee. It must then register with and report to the Commission pursuant to the Act. See 2 U.S.C. §§432, 433, 434. Further, such organizations will also be subject to the applicable limitations on contributions and expenditures set out in 18 U.S.C. §591 *et seq* including 18 U.S.C. §608, 610 and 611.

It appears that, at the present time at least, the limitations of 18 U.S.C. §608(b)(3) would be the only limitation applicable to contributions to Freedom of choice. The limitations of 18 U.S.C. §608(b)(1) and (2) apply to contribution to candidates.¹ The limitations of §608(b)(1) and (2) will apply to contributions to Freedom of Choice, if the committee becomes a single candidate committee or a candidate's principal campaign committee or authorized committee. These limitations would also apply to contributions which are made to Freedom of Choice but which are earmarked or otherwise directed by the contributor to a particular candidate. 18 U.S.C. §608(4)(6) and Advisory Opinion 1975-32 (40 FR 5556, November 28, 1975).

In the event that Freedom of Choice becomes a principal campaign committee, an authorized committee, or a single candidate committee the limits of §608(b)(1) and (2) would apply to funds on hand as of that time. For example, the section 608(b)(1) contribution limit of \$1,000 from any person per election would be triggered and would require Freedom of Choice to undertake a review of contributions from any person in excess of \$1,000 to determine those situations where the return of any excess would be required.

The limitation of 18 U.S.C. §608(b)(3) applies generally to contributions as defined in 18 U.S.C. §591(e). This definition, like the definition in 2 U.S.C. §431(e), refers to contributions made for the purpose of influencing the nomination or election of any person. Consequently, the limitation on contributions in §608(b)(3) would be applicable to individual contributors to this committee.

¹ The contribution limit in §608(b)(3) applies to individuals only and is \$25,000 per calendar year; the contribution limits in subsections (b)(1) and (2) are \$1000 and \$5000 per candidate per election and apply respectively to persons (including individuals) and qualified multicandidate committees.

AO 1975-81

Page 3

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

Date: January 10, 1976

(signed) _____
Thomas B. Curtis
Chairman for the
Federal Election Commission