

ADVISORY OPINION 1975-91

Expenditures by the Democratic National Committee and Other Political Committees to Defray Expenses of Delegates and Alternates to the Presidential Nominating Convention

This advisory opinion is issued under 2 U.S.C. §437f in response to a request submitted by Sheldon Cohen on behalf of the Democratic National Committee (DNC) which was published as AOR 1975-91 in the November 4, 1975, Federal Register (40 FR 51356). Interested parties were given an opportunity to submit written comments relating to the request.

The DNC wishes to know under what circumstances could expenses of delegates and alternates participating in the presidential nominating convention be defrayed by either the DNC or state and local party committees without violating 26 U.S.C. §9008. On January 15, 1976, the Commission adopted the proposed regulation on convention financing for transmittal to Congress. The conclusions reached in this advisory opinion are based upon the provisions in that proposed regulation.

The statute provides that the DNC may not defray the expenses of delegates and candidates with public funds (26 U.S.C. §9008(c)). However, the DNC may use public funds to defray the expenses of a person who is participating at the convention in the capacity of official convention personnel of the national party, even though that person is simultaneously a delegate or candidate to the convention. Otherwise, delegate and candidate expenses may be defrayed by the DNC with private funds, but the amount of the private funds so expended will count toward the party's \$2 million expenditure limitation and entitlement. See §120.2(e)(11) of the proposed regulation. For example, if the DNC spends \$250,000 for delegate expenses from private funds, its entitlement to public funds and the amount the DNC may spend for other convention expenses will be reduced by that amount to \$1,750,000. If, however, the state or local party committees wish to defray the expenses of delegates to the convention, those expenditures are not only permissible, but also they will not be considered to be expenditures made by the national party under 26 U.S.C. §9008(d)(1), and thus not counted toward the national party's expenditure limitation or against its entitlement. See §121.5. The Commission points out that Convention expenditures of 26 U.S.C. §9008 are separate from expenditures under 18 U.S.C. §608. Consequently, the reporting requirements and expenditure limitations applicable to delegate-candidates outlined in Advisory Opinion 1975-12 remain intact (40 FR 55596, Nov. 28, 1975).

Finally, the DNC suggests that they could receive their full entitlement and still defray the expenses of delegates with additional private funds if the Commission allows them the exception provided in 26 U.S.C. §9008(d)(3). The only way that a national party may spend more than its limit, whether or not the party accepts all, part, or none of its public fund entitlements, is if the Commission determines under §9008(d)(3) that the extra expenditures are "due to extraordinary and unforeseen circumstances." Congressional intent indicates that such exceptions would be made "only in cases in

which events of a catastrophic nature overwhelmingly imperil the operation of a presidential nominating convention". H. Rept. 1239, 93d Cong., 2d Sess. 34 (1974)

Based on this statutory language and history, the Commission does not at this time consider the impecunious status of delegates to fall within the exception of being "unforeseen" or "catastrophic".

Finally, the Commission is of the opinion that any reference in this advisory opinion to "delegates" is equally applicable to alternates.

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.