

ADVISORY OPINION 1975-99

Application of 18 U.S.C. §611 to Contributions made by Government Contractors to Non-Federal Candidates or for Non-Federal Political Purpose

This advisory opinion is issued pursuant to 2 U.S.C. §437f in response to a request submitted by the San Francisco Republican County Central Committee. The request was published on November 5, 1975, in the Federal Register (40 FR 51612). Interested parties were then given an opportunity to comment, and a number of comments were received by the Commission.

The San Francisco Republican County Central Committee (hereinafter the Committee) states that it is a political committee within the meaning of 18 U.S.C. §591(d). It conducts various activities related to State, local and Federal elections. The Committee's State and local activities are funded out of a separate, restricted bank account to which various persons (as defined by 18 U.S.C. §591(g)) and labor organizations (as defined by 18 U.S.C. §610) make contributions. The Committee asks whether this account may receive contributions from persons and labor organizations which are government contractors within the meaning of 18 U.S.C. §611.

The Commission concludes that the prohibitory language of 18 U.S.C. §611 extends only to Federal elections.

The portion of §611 at issue herein generally forbids parties entering into or performing contracts with the Federal government from:

"... directly or indirectly mak(ing) any contribution of money or other thing of value, or promis(ing) expressly or impliedly to make any such contribution, to any political party, committee, or candidate for public office or to any person for any political purpose or use;"

It also prohibits any person from "knowingly solicit(ing)" any contribution from a government contractor.

Although the preceding language is not dispositive of the question raised by the Committee, when it is examined in the context of the "separate segregated fund" clause which was added to §611 by a 1974 congressional amendment, there is a persuasive suggestion that it was intended to apply to Federal elections only.

The clause states that a government contractor may establish a separate segregated fund "for the purpose of influencing the nomination for election, or election, of any person to Federal office" (emphasis added). If the word Federal is not read back into the prior prohibition portion of §611, there is an obvious internal inconsistency in the

entire statute. On the one hand corporations and labor unions which are Government contractors could make contributions to Federal elections out of separate segregated funds; on the other hand, the same corporations and labor unions, as well as all other persons and parties falling within the ambit of §611, would be absolutely prohibited from contributing to state and local elections. In short, Congress, for no apparent reason, would have created a distinction between contributions of Government contractors to state and local elections and contributions to Federal elections. The distinction would produce a more restrictive result where there is clearly less of a Federal interest.

The Commission's conclusions are also consonant with the overall rationale behind §611. This rationale--from the time of the statute's enactment in 1940--is clearly to prohibit improper political contracts between, on the one hand, Federal contractors and, on the other hand, the Federal officials awarding the contracts. [See Cong. Rec., Vol. 84, Part 9, p. 9599 (1939); Cong. Rec., Vol. 86, pp. 2981-82 (1940)] The likelihood that such contracts would result from contributions to a state campaign is too remote to warrant infringement of First Amendment rights by application of Section 611.

It is also to be noted that the plain intent and meaning of the amendments to 18 U.S.C. §§591, 611 made by the Federal Election Campaign Act of 1971 and the 1974 Amendments thereto, is directed at Federal elections. If Congress intended that §611 apply to state and local elections after the 1971 Act it would seem logical that there would be some specific language or legislative history to this effect. However, there is none. Indeed, if §611 is deemed applicable to Federal, state and local elections, this would make Federal contractors more strictly regulated than any corporation or labor organization covered only by §610.

In rendering this opinion, the Commission is mindful of the fact that under the 1974 amendments to the 1971 Act, the definition of contribution in §591(e), which is restricted to "influencing" a person's nomination or election "to Federal office," does not govern the interpretation of §611 if it is "otherwise specifically provided" in that section. However, within §611 there is no internal definition of "contribution" nor of several other crucial terms which are defined in §591; nor is there any language expressly indicating that the section is intended to reach state and local as well as Federal elections. Thus, it seems evident that the definitions of §591 continue to preclude the application of §611 to state and local elections.

The most reasonable construction of the language of §611 prohibiting contributors from contributing "to any political party, committee, or candidate . . . or to any person for any political purpose or use" is that it was meant to be a catchall clause applying to any gift of money which affects the Federal election process, irrespective of whether such gift is to a specific, political party, committee, or candidate. This would follow the well accepted doctrine of statutory construction that, "where general words follow specific words in an enumeration describing the legal subject, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." 2A J. Sutherland, Statutes and Statutory Construction, §47.17 (and cases cited therein); FMC v. Seatrain Lines, Inc., 411 U.S. 726 (1973).

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.