Re: AOR 1976-02

NOTE: The responsive document to AOR 1976-02 is an Opinion of Counsel, not an opinion issued by the Commission, and does not constitute an Advisory Opinion. It is included in this database for archival purposes and may not be relied upon by any person.

AOR 1976-2 issued as OC1976-19.

OC 1976-19

Honorable Frank E. Moss United States Senate 115 Russell Senate Office Building Washington, D.C. 20510

Honorable Gunn McKay
U.S. House of Representatives
417 Longworth House Office Building
Washington, D.C. 20515

Honorable Allen T. Howe U.S. House of Pepresentatives 525 Longworth House Office Euilding Washington, D.C. 20515

Honorable Calvin L. Rampton Governor of Utah Salt Lake City, Utah 84114

Gentlemen:

• This responds to your request for an advisory opinion from the Commission which was originally processed as AOR 1976-2. You ask whether, as candidates for Federal office, you can serve as an officer of a political committee that contributes to the Utah State Democratic Party, local and State campaigns and Federal campaigns including your own.

The Supreme Court recently held in Buckley v. Valeo, 44 U.S.L.W. 4127 (S.C. January 30, 1976), that the Commission as constituted could not be given statutory authority to issue advisory opinions. Although this part of the Court's judgment was stayed for 30 days the Commission has determined that it will not issue further advisory opinions under 2 U.S.C. §437f during the stay period. Thus, this letter should be recarded as an opinion of counsel, rather than an advisory opinion.

You state that the One Hundred Club is a political committee that receives contributions from individuals and corporations and that these funds, which are disbursed through your authority, are maintained in segregated accounts. By segregated accounts you presumably mean that corporate funds are not commingled with funds lawfully contributed under Federal law. You further explain that most of the monies received by the Club are disbursed to the Democratic Party of the State of Utah although some funds are contributed to State and Federal candidates.

Your first question is whether the Federal election laws are violated if any of you serve as officers of the Club. It is my opinion that neither the Federal Election Campaign Act of 1971, as amended, nor pertinent sections of Title 18, United States Code, would prohibit your serving as officers of the Club.

You secondly ask whether this conclusion would be different if the Club contributed to any of your current election campaigns for Federal office. In general, the fact that certain officers of the Club are also Federal candidates would not in itself alter my opinion as stated above. However, there are certain other factors not described in your inquiry which affect the operations of the Club as they relate to Federal candi-For example, under 18 U.S.C. §608(b)(4) contributions to a named candidate made to any political committee authorized in writing by that candidate are considered contributions to that candidate. Thus, if a Federal candidate who also happens to be an officer of the Club has authorized the Club to accept contributions on his behalf then any contributions received by the Club in that candidate's name would be considered contributions to that candidate and subject to limitation under 5608(b)(1) or (2) as applicable. Furthermore, under 5608(b)(6) all contributions made by a person, even if indirect, on behalf of a particular candidate including contributions that are in any way earmarked or "otherwise directed through an intermediary or conduit to such candidate," are treated as contributions from that person to the candidate. Thus, if any donor to the Club in any way directs the Club to pass along his/her contribution to any Federal candidate then such contribution would have to be charged against the contribution limit of the original donor. Furthermore, even in the absence of any indirect earmarking or direction by the criginal donor, contributions to the Club would, in my opinion, be regarded as tacitly

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directed to the campaigns of the officers who are Federal candidates, if (1) the Club utilizes its non-corporate funds (held in the segregated account) solely to make contributions to or expenditures on behalf of those officers, and (2) the donor knows of the Club's fund-utilization policy at the time his/her contribution to the Club is made. See AO 1975-32, AO 1975-48, and AO 1975-74, copies enclosed. I note also that 18 U.S.C. §608(b)(3) limits contributions by individuals to the Club.

The foregoing represents an opinionoof counsel which the Commission has noted without objection.

Sincerely yours,

John G. Murphy, Jr. General Counsel

Enclosures

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