

17 AUG 1976

Re: AOR 1976-20

Mr. Charles H. Breecher
Delaware Volunteers for Reagan
133 Columbia Avenue
Rehoboth Beach, Delaware 19971

Dear Mr. Breecher:

This responds to your request of May 15, 1976, for an opinion regarding the application of contribution limits of the Federal Election Campaign Act of 1971, as amended ("the Act"), to donations by any person to an unauthorized political committee.

We regret the delay in answering your inquiry, but, subsequent to the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1 (1976), the Commission was required to suspend the issuance of advisory opinions until after the date of its reconstitution. Moreover, 2 U.S.C. §437f, as amended by the Federal election Campaign Act Amendments of 1976, now requires the Commission to formulate its rules of general applicability by proposing formal regulations, rather than by the advisory opinion process. The Commission has recently approved proposed regulations for transmittal to Congress which directly relate to the issues raised in your request.

You state you are treasurer of an unauthorized political committee, Delaware Volunteers for Reagan, and you ask whether contributions to this committee are subject to any limitation under the Act. 2 U.S.C. §431(d) defines a "political committee" as any committee (whether or not authorized) which receives contributions or makes expenditures in excess of \$1,000 during a calendar year; "contributions" and "expenditures" are gifts or payments made for the purpose of influencing a Federal candidate's election, see §§431(e) and (f). Under 2 U.S.C. §§441a(a)(1)(C) and (a)(2)(C) persons¹ and multi-candidate political committees are limited to contributions not in excess of \$5,000 in any calendar year to "any . . . political committee." Therefore, as a general rule a committee within the definition of §431(d) that is neither an authorized candidate committee nor a committee established by a national party, may accept contributions from any one person not in excess of \$5,000 per calendar year and any contribution from an individual would be applied against his or her \$25,000 annual contribution limitation contained in 2 U.S.C. §441a(a)(3). However, under the circumstances discussed below, donors to your committee will be regarded as making contributions to the single candidate supported by your committee and thus subject to the \$1,000 limit in 2 U.S.C. §441a(a)(1), or \$5,000 if the donor is a qualified multi-candidate committee, 2 U.S.C. §441a(a)(2).

¹ "Persons" is defined in 2 U.S.C. §431(h), and includes an individual, partnership, committee and any other organization or group of persons.

Your request raised the question whether persons who have already contributed their maximum amount under the Act to Governor Reagan may contribute any amount to Delaware Volunteers for Reagan, which though an unauthorized political committee, is apparently supporting only his candidacy. 2 U.S.C. §441a(a)(1)(A) places a \$1,000 per election limit on contributions by persons "to a Federal candidate." Furthermore, in addition to direct contributions to the candidate, contributions are considered to be made "to" a candidate if they are contributions made to an authorized political committee of the candidate (§441a(a)(7)(A)); expenditures made in consultation with or at the suggestion of the candidate (§441a(a)(7)(B)(i)); or contributions made either directly or indirectly on behalf of a particular candidate (§441a(a)(B)).

The above statutory provisions were designed to enforce the limitations on contributions upheld by the Supreme Court in Buckley by closing loopholes that would otherwise allow a contributor to give his maximum permissible contribution directly to a candidate, and then indirectly contribute additional funds to the same candidate, by either making expenditures himself in cooperation with the candidate, or by contributing to a political committee which is solely supporting the same candidate. The Joint Explanatory Statement of the Committee of Conference, in explaining the above provisions, stated:

The conferees also agree that the same limitations on contributions that apply to a candidate shall also apply to a committee making expenditures solely on behalf of such candidate.

This definition [of "contribution"] distinguishes between independent expressions of an individual's views and the use of an individual's resources to aid a candidate in a manner indistinguishable in substance from the direct payment of cash to a candidate.

Conference Report, No. 94-1057, pp. 58, 59 April 28, 1976

The Commission's proposed regulations reflect this Congressional intent in §110.1(h), by stating that a person may contribute to a candidate and also contribute to a political committee supporting the candidate so long as (1) the political committee is not an authorized committee of the candidate or a single candidate committee supporting only the same candidate; (2) the contributor does not give with the knowledge that a substantial portion will be contributed to or expended on behalf of that candidate; and (3) the contributor does not retain control over the funds. Thus, the Delaware Volunteers for Reagan could not accept contributions from persons who had already contributed their maximum amount to Governor Reagan, one of his authorized political committees, or another committee supporting only Governor Reagan's candidacy, since contributions to a single candidate political committee are clearly made "on behalf of" the candidate supported by the committee.

You raise the question whether contributions to an unauthorized political committee should be treated as independent expenditures, and thus subject to no limitation pursuant to Buckley. The Supreme Court struck down expenditure limitations, holding them violative of the First Amendment right of freedom of speech, but found limitations on contributions were constitutional:

A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributors freedom to discuss candidates and issues.

96 S. Ct. 612, at 636.

The focus of the Court was on the constitutional right to "vigorous advocacy" by an individual or organization; however this right did not include donations to another person or organization to communicate for the original "speaker." Under Buckley, the 1976 Amendments to the Federal Election Campaign Act of 1971, and the Commission's proposed regulations, Part 109, a person or organization is subject to no limitation on "independent expenditures"² made for or against Federal candidates. The right to "speak one's mind" is thus unimpaired. However, when the speaker chooses to contribute to another person or organization, the Court's rationale for upholding contribution limits comes into play, and the Act's limits would apply to this activity.

In summary, it would be permissible under the Act for a person to do either of the following things, but only one: (1) contribute \$1,000 per election directly to a Federal candidate or he candidate's authorized committees, (2) contribute \$1,000 per election to an unauthorized single candidate committee that makes independent expenditures on behalf of the candidate.³ A person may contribute \$5,000 during a calendar year to a political committee other than the type described in (1) and (2) only if the conditions in §110.1(h) of the proposed regulations are satisfied. In any event, the person may also make unlimited independent expenditures from his or her personal funds to influence the nomination or election of the candidate. The foregoing conclusions relating to the limits on contributions to an unauthorized single candidate committee shall only apply with respect to contributions made by the donor after July 30, 1976, the date the Commission approved §110.1(h) of the proposed regulations.

This response relates to your opinion request but may be regarded as informational only and not as an advisory opinion since it is based in part on proposed regulations of the Commission which must be submitted to Congress. The proposed regulations may be prescribed in final form by the Commission only if not disapproved

² "Independent expenditure" is defined as an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, and which is not made in concert with, or at the request of any candidate, 2 U.S.C. §431(p).

³ If the person is a multi-candidate committee under 2 U.S.C. §441a(a)(4) the applicable amount is \$5,000 rather than \$1,000.

either by the House or the Senate within thirty legislative days from the date received by them. 2 U.S.C. §438(c). The proposed regulations were submitted to Congress on August 3, 1976. It is the Commission's view that no enforcement or compliance action should be initiated in this matter if the actions of the political committee you represent conform to the conclusions and views stated in this letter.

Sincerely yours,

(signed)

Vernon W. Thomson

Chairman for the

Federal Election Commission