

23 AUG 1976

Re: AOR 1976-22

Morley A. Winograd  
Chairperson  
Michigan Democratic Party  
John F. Kennedy House  
321 N. Pine  
Lansing, Michigan 48933

Dear Mr. Winograd:

This responds to your letter of May 17, 1976, requesting an advisory opinion as to the obligations of the Michigan Democratic Party regarding the reporting of contributions transferred from the party's "bingo account" to its "federal account".

The Commission understands from your letter that the State Democratic Party and various congressional district and county party organizations are licensed to conduct weekly bingo games whose proceeds may be applied, in whole or in part to influence Federal elections. Although the party organizations record the number of attendants, and the net and gross proceeds, as required by the regulations of the Michigan State Lottery Commission, no records are kept on the identification of participants or the cash amount which an individual spends on a given night or over a period of time.

The Commission further understands that Michigan law requires that the net proceeds of such "bingo nights" first be deposited in a special "bingo account" of the party organization, from which monies later may be transferred and used for any lawful purpose (including the support of Federal candidates). You anticipate that various subordinate State committees (see §100.19 of the Commission's proposed regulations--copy enclosed) of the Michigan Democratic Party may wish to transfer all or part of the funds in their respective bingo accounts to their "federal accounts" for application to Federal election purposes, and you therefore pose the question of how the receipt of funds into the "federal account" should be treated under the provisions of the Federal Election Campaign Act of 1971, as amended.

Several provisions of the Act and of the Commission's proposed regulations implementing and interpreting the Act impose duties upon the various committees in connection with the transactions which you describe. Please note that those regulations substantially modify the rules stated in AO 1975-2. First, §102.6(b) of those proposed regulations would prohibit the transfer of funds from the "bingo accounts" to the "federal accounts" unless the following conditions are met:

1. All funds contained in the bingo account are of the kind which lawfully may be contributed to Federal candidates and committees under the Act (e.g., no corporate or union contributions);

2. All purchasers of bingo cards are informed of the portion of the purchase price which counts toward the individual's contribution limits under the Act. That portion is then considered in its entirety to be a Federal contribution, and is not reduced by the pro rata cost of holding the event. See §100.4(a)(2) of the proposed regulations.

Second, all literature and materials advertising the bingo event must include the statement required by 2 U.S.C. §453(b) that:

A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C.

Third, the committees also must comply with the record keeping and reporting requirements of the Act and proposed regulations. Section 102.9 of those proposed regulations (which interprets and implements 2 U.S.C. §432(c)) requires the recording of the identification of every person making a contribution in excess of \$50.00, and the occupation and principal place of business of individuals whose contributions, when aggregated, exceed \$100 during a calendar year. In addition, the committees are required to disclose, on their reports of receipts and expenditures, the identification, occupation, and principal place of business of individuals whose contributions, when aggregated, exceed \$100 during a calendar year. In addition, the committees are required to disclose, on their reports of receipts and expenditures, the identification, occupation, and principal place of business of such individuals, whose contributions, when aggregated, exceed \$100 during a calendar year. The last sentence of 2 U.S.C. §434(b)(14) does provide however, that when committee treasurers and candidates show that best efforts have been used to obtain and submit the information which is required to be disclosed in the reports, they shall be deemed to have fulfilled their duties in that regard.

The Commission understands that the various committees are willing to certify that no individual has purchased more than \$15.00 worth of bingo cards at a given event. Since the Act does not require the recording of the identification of every individual making a contribution of \$50.00 or less but does require that best efforts be used to obtain and report the identification, occupation, and principal place of business of individuals whose contributions, when aggregated, exceed \$100 during a calendar year, the Commission concludes that in the specific factual situation which you present, "best efforts" would require the following:

1. The committees must make every effort to record the name of every individual who purchases a bingo card at each bingo event;

2. At the fourth event at which an individual who has given his or her name makes a purchase (which, under your proposed certification of a maximum of \$15.00

purchased at any given event, would mean that the individual's total purchases may exceed \$50.00) the committee must record the amount purchased at that fourth event, and, if the purchaser can remember them, the amounts purchased at previous "bingo events."

3. The account generated by the procedure described above may be relied upon in the preparation of the committee's reports of receipts and expenditures.

We understand that there will be bingo participants who will decline to have their names recorded. In such case, the maximum percentage of the proceeds of any event which may be transferred to the Federal account is the lesser of (1) the percentage that purchasers were informed would be so transferred; or (2) the percentage equal to the percentage of purchasers whose names were recorded.

Thus, under the Act, the purchases of bingo cards are, and must be reported as, contributions to the sponsoring committee, even though those contributions are required by State law to pass through a "bingo account"; and expenditures for bingo events are considered expenditures by the sponsoring committee, and must be reported (as allocated between State and Federal purposes pursuant to §106.1(e)).

The awarding of cash prizes in currency (as required by State law), rather than by written instrument, *e.g.*, check is permissible under the Act, provided that currency for cash prizes in amounts exceeding \$100 for any one bingo event is obtained by a check payable to petty cash which is drawn on the committee's "bingo account" or its "federal account."

The statements contained in this letter are not intended to have any application in State and local jurisdictions where bingo is unlawful.

This responses 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 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 the Congress on August 3, 1976. It is the Commission's view that no enforcement or compliance action

AOR 1976-22

Page 4

should be initiated in this matter if the actions of the political committee conform to the conclusions and views stated in this letter.

Sincerely yours,

(signed)

Vernon W. Thomson

Chairman for the

Federal Election Commission

Enclosures [§§100.4(a)(2), 100.19, 102.6, 102.9, 106.1(c)]