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I/C #520

Ms. Bonny Miller
State Coordinator
GOP Feminist Caucus
6201 Ashcroft Lane
Minneapolis, Minnesota 55424

Dear Ms. Miller:

This letter is in response to your letter of February 4, 1976, in which you request the General Counsel's opinion as to the status under the Act of your fundraising effort for the GOP Feminist Caucus ("the Caucus").

I regret the considerable delay in answering your inquiry which was unavoidable in view of the Supreme Court decision in Buckley v. Valeo, 424 U.S. 1 (1976), and the need for legislation reconstituting the Commission. The Federal Election Campaign Act Amendments of 1976 among other things have modified the advisory opinion procedure set forth in 2 U.S.C. §437f which now provides that the Commission must state rules of general applicability in the form of proposed regulations rather than through the advisory opinion process. In addition, the Commission and its employees may not issue an opinion of "an advisory nature" unless it is a statutory advisory opinion issued by the Commission to a person with standing to request and receive such an opinion pursuant to §437f. Your letter does not indicate that you are requesting an opinion on behalf of a person with standing, i.e., a Federal candidate, officeholder, or political committee, as defined in the Act; therefore, this letter is issued for informational purposes only.

In your letter you indicate that funds for your organization are raised by the sale of buttons which say "Betty's Husband for President in '76". According to your letter, the cost of the buttons has been less than \$350, and you do not anticipate spending more than \$1,000 for the buttons during this election year. The funds collected

from the sale of the buttons will be used for "feminist candidates at the local and State level." You do not anticipate that your group will contribute more than \$50 to a campaign at the Federal level.

As you stated to a member of the General Counsel's staff, the Caucus independently conceived of the idea to use buttons with this caption. The buttons are purchased from a commercial dealer, and the purpose for selling the buttons is to raise funds for the Caucus. Since the Caucus began its efforts, the buttons themselves have received national publicity. Until recently, the Caucus has, to the best of your knowledge, been the only source for these particular buttons; they are now being produced by and for the President Ford Committee but this has occurred without any apparent involvement or coordination with the Caucus.

I have enclosed a copy of regulations on independent expenditures which the Commission recently adopted and submitted to the Congress on August 3, 1976. The proposed regulations may be prescribed in final form by the Commission only if not disapproved by either the House of Representatives or the Senate within thirty legislative days from the date each House received them. 2 U.S.C. §438(c).

Section 109.1, which sets forth a definition of independent expenditure, provides:

(a) "Independent expenditure" means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate which is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate.

"Clearly identified candidate" is defined in §109.1(b)-(3) to mean:

. . . that the name of the candidate appears, a photograph or drawing of the candidate appears, or the identity of the candidate is otherwise apparent by unambiguous reference.

If your expenses for the buttons come within the definition of an independent expenditure, there is no limitation on the amount of money that the Caucus may spend. If the expenses were incurred with the prior consent of, or in consultation with, or at the request or suggestion of the President Ford Committee or any agent of the Committee or candidate, then the activity would be considered a contribution in-kind to the Committee and subject to the \$1,000 limitation on contributions to President Ford in connection with his campaign for the nomination. 2 U.S.C. §441a(a)(1)(A). Expenses incurred during the general election campaign period must qualify as independent expenditures since as a general rule contributions to Presidential candidates who receive full public funding are prohibited. 26 U.S.C. §9003 and §141.2 of the proposed regulations.

Persons who make independent expenditures aggregating in excess of \$100 during a calendar year are required to file a report with the Federal Election Commission. See §109.2(b) of the enclosed regulations. A copy of the appropriate reporting form is enclosed for your convenience.

I note for your further information that party committees may not make independent expenditures in connection with the general election campaign of their candidates for Federal office. In this context "party committee" includes any organization under the control or direction of the State party organization which under the bylaws of the party has responsibility for the day-to-day operation of the political party at the State level. See §110.7(b) and §100.19 of the Commission's proposed regulations. A political party committee of a State, county, city, or congressional district may, however, make expenditures not to exceed \$1,000 which further the general election campaign of the party's nominee or nominees, including the Presidential and Vice Presidential nominees. §110.7(b)(5). (See page 5 of the enclosed letter for an explanation of this expenditure right.) If your organization is under the control or direction of the State party but is not part of the official party structure, you may wish to coordinate your efforts with a party committee which has this expenditure right. As the letter indicates, you may consult with the nominee about this \$1,000 expenditure right.

- 4 -

This letter is for informational purposes only and does not represent a statutory advisory opinion under 2 U.S.C. §437f, since the Caucus, as discussed above, does not appear to be a "political committee."

Sincerely yours,

"Signed"

N. Bradley Litchfield
Assistant General Counsel

Enclosures [(1) Form mentioned in last sentence of antepenultimate paragraph of ltr., (2) 8/25/76 FR reprint, and (3) response to O/R #715]

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