

21 SEP 1976

Re: AOR 1976-65

Joseph G. Schiff
The Republican Party
310 Speed Building
333 Guthrie Street
Louisville, Kentucky 40404

Dear Mr. Schiff:

This letter is in response to yours of August 2, 1976, concerning Today's Republican, a publication of the Republican Executive Committee of Jefferson County ("the Executive Committee") which has registered with the Commission as a political committee. This publication, which you intend to issue on a quarterly basis, is mailed only to "individuals desiring a relationship with the Republican Party." You ask whether the Federal Election Campaign Act of 1971, as amended ("the Act"), would prohibit corporations from advertising in Today's Republican. You further inquire as to the reporting obligations of the Executive Committee with respect to Today's Republican.

As you are aware, 2 U.S.C. §441b(a) states that it is unlawful for a corporation to make a contribution or expenditure "in connection with" a Federal election. For purposes of §441b, "the term 'contribution or expenditure' shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with" a Federal election. The question posed then, is whether a corporation's payment for advertising space in Today's Republican would constitute a contribution or expenditure in connection with a Federal election. It is the Commission's opinion that such a payment would constitute a contribution prohibited by the Act.

In 26 U.S.C. §276, Congress has disallowed any business deductions for amounts paid for advertising in any publication "if any part of the proceeds of such publication directly or indirectly inures (or is intended to inure) to or for the use of a political party or a political candidate." The deduction is disallowed whether or not a "political committee" or a Federal candidate is involved. This provision reflects the view that such advertising proceeds constitute indirect political contributions, not the normal business expenses allowable as deductions under 26 U.S.C. §162.

Applying this reasoning to the situation you pose, the proceeds from corporate advertising in Today's Republican would also constitute political contributions. Such funds necessarily have a political character even if they are given in consideration for valuable advertising space at rates similar to those for comparable publications. The

advertising proceeds represent income of the Executive Committee which, by virtue of its registration with the Commission, evidently makes or receives contributions, or makes expenditures, (1) for the purpose of influencing the nomination or election of one or more persons to Federal office, as well as (2) in connection with Federal elections.

Thus, by application of the definition of "contribution or expenditure" in 2 U.S.C. §441b, payments by corporations for advertising in Today's Republican are prohibited. However, in this regard we draw your attention to §102.6 of the Commission's proposed regulations (copy enclosed) which deals with the separation of Federal and non-Federal funds. Paragraph (a) of this regulation reads as follows:

(a)(1) Each State committee, and each subordinate committee of the State committee [See §100.19], which intends to solicit, receive, or make contributions or expenditures, in excess of \$1,000, to, for, or on behalf of any candidate for Federal office, or

(2) any political committee which has solicited or received contributions for or on behalf of, or made expenditures or transfers to or on behalf of, any candidate for Federal office, shall either:

(i) Establish a separate Federal campaign committee which shall register as a political committee. The Federal campaign committee shall establish a segregated Federal account in either a national or State bank; or

(ii) Establish a single committee with a single account to make contributions to Federal and non-Federal candidates, but only if all contributions received are permissible under the Act, and all contributors are informed that all contributions are subject to the limitations of §§110.1, 110.2 and 110.5. [Emphasis added.]

If the Executive Committee organizes pursuant to §102.6(a)(2)(i), and if permitted under State law, proceeds from corporate advertising may be received by the non-Federal committee and expended exclusively for non-Federal purposes. However, all expenses of producing and distributing Today's Republican must be paid from the Federal committee since the Federal and non-Federal aspects of the publication are indivisible and consequently no reasonable basis exists for making any allocation under Part 106 of the Commission's proposed regulations. Of course the Federal committee may receive otherwise proper contributions from the separate segregated fund (political action committee) properly established by a corporation under 2 U.S.C. §441b and Part 114 of the Commission's proposed regulations.

If Today's Republican is completely devoid of any specific or general reference to Federal candidates, and consequently is not a communication made to influence the nomination or election of any person to Federal office, then the expenses of producing and distributing it would be excluded from the definition of "expenditure." 2 U.S.C.

§431(f)(4)(F). In that event the publication may be financed entirely with corporate funds (if proper under State law) and may include advertising from corporations if the proceeds are not used in connection with any Federal election.

Your second inquiry relates to financial disclosure requirements regarding the publication of Today's Republican by the Executive Committee. If the Executive Committee is a "political committee" under the Act which has not established a Federal committee, then it must report all "contributions" received and "expenditures" made whether or not they relate to the publication. 2 U.S.C. §434(b); §102.6 and Part 104 of the proposed regulations. Advertising proceeds (otherwise proper) and donations to cover the publishing costs of Today's Republican would constitute contributions and the expenses of production would be expenditures if they were received or made for the purpose of influencing the nomination or election of any person to Federal office. 2 U.S.C. §431(e). If not a "contribution" or "expenditure" the donations and payments would nevertheless be reportable receipts and disbursements of a "political committee." 2 U.S.C. §434(b)(7) and §104.2(b) of the Commission's proposed regulations.

A final question is whether the expenses of producing Today's Republican may be exempt from the definition of "expenditure" by reason of 2 U.S.C. §431(f)(4)(C) which provides that "expenditure" does not include:

(C) any communication by any membership organization or corporation to its members . . . if such membership organization . . . is not organized primarily for the purpose of influencing the nomination for election, or election, of any person to Federal office except that the costs incurred by a membership organization . . . directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed \$2,000 per election, be reported to the Commission.

In relation to this exemption, §100.7(b)(5)(iv) of the Commission's proposed regulations defines "members," in part, as "all persons who are currently satisfying the requirements for membership in a membership organization." On the record you have presented it does not appear that circulation is limited only to members of the Executive Committee or that the Executive Committee is a membership organization of the type contemplated by 2 U.S.C. §431(f)(4)(C). See AO 1975-2, copy enclosed.

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 were submitted to Congress on August 3, 1976. The proposed regulations may be prescribed in final form by the Commission only

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if not disapproved either by the House or the Senate within 30 legislative days from the date received by them. 2 U.S.C. §438(c).

Sincerely yours,

(signed)

Vernon W. Thomson

Chairman for the

Federal Election Commission

Enclosures