



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 19, 1977

AO 1977-50

Honorable Bob Packwood
Chairman, National Republican Senatorial Committee
445 Senate Office Building
Washington, D.C. 20310

Dear Chairman Packwood:

This refers to your letter of September 28, 1977, requesting an advisory opinion on behalf of the National Republican Senatorial Committee ("NRSC") concerning application of the Federal Election Campaign Act of 1971, an amended ("the Act").

Your letter sets forth the general circumstances with respect to which an advisory opinion is requested:

The NRSC intends to initiate a program whereby the NRSC will pay the cost of ordinary and necessary expenses incurred by Republican members of the United States Senate in connection with their official duties as federal officeholders. The expenses are not reimbursed by any other method. The payments by the NRSC are not being made for the purpose of influencing a federal election but for the purpose of defraying the officeholder's non-campaign expenses.

The method of payment will be a direct payment by the NRSC to the individual or company supplying the service to the respective Senator. Each Senator will request payment by submitting a request form to the NRSC along with the bill. The form will contain the requested amount, the purpose of the expense, a certification that the expense was not incurred for the purpose of influencing a federal election and the signature of the requesting Senator. Some of the expenses which will be paid by the NRSC under the program are as follows:

1. Member and staff travel on official business.
2. Expenses for consulting to improve efficiency and effectiveness in office operations, including constituent

mail and caseworker communications, and general management.

3. Purchase of mailing lists to put on Senate computer.
4. Entertainment of constituents and media representatives.
5. Purchase of newspapers, periodicals and media directories.
6. Staff salaries.
7. Purchase of paraphernalia for a Senator's office, such as a state seal, or U.S. or state flag.
8. Expense for use or purchase of photographic video tape and other communications and office equipment and supplies.
9. Expenses for preparation of various materials to be supplied to print and radio and TV media on official business, including use of the Senate TV and Recording Studio.
10. All other expenses qualified as "Ordinary and Necessary Business Expenses" as defined by IRS.
11. Speechwriters.

The NRSC will not deduct these payments from the permissible amount of monies which it may contribute to candidates in both the primary and general elections and will continue the program throughout the incumbent's election year.

The NRSC requests an advisory opinion stating that the procedure and method of paying expenses outlined above is in compliance with the Act and regulations prescribed by the Commission.

The Commission concludes that payments by NRSC for the described expenses are neither contributions nor expenditures under the Act for the particular Senators on whose behalf the expenses are paid unless the payments are made for the purpose of influencing their nomination or election. Payments made for the purpose of influencing a particular Senator's nomination or election are, of course, subject to disclosure and limitation under the Act. See, in particular, 2 U.S.C. 432(e), 434(b)(4), (9) and 441a(a). A conclusive Commission determination of whether NRSC payment for any of the foregoing expenses is a "contribution" or "expenditure" would depend upon thorough evaluation of all the circumstances and facts in a situation where a particular payment is contemplated. Such circumstances and facts are not presented in your request. To assist in your further analysis of specific factual situations the Commission encloses

herewith several past advisory opinions discussing office holder activity as distinguished from contributions made to influence a Federal election. See Advisory Opinions 1975-132, 1976-32, 1976-57, 1977-10, 1977-11.

In cases where payment of the expenses in question does not entail the making of a "contribution" or "expenditure", NRSC would nevertheless be required to report them as disbursements with appropriate identification of each person to whom NRSC's payments are made. 11 CFR 104.2(b); see also 2 U.S.C. 434(b)(14) and Advisory opinion 1975-132. Furthermore, the particular Senators on whose behalf NRSC payments are made would be required to report the payments as receipts and corresponding disbursements. See 2 U.S.C. 439a and 11 CFR 113.1 et seq. The definition of the term "funds donated" to a Federal officeholder specifically includes "advances, credits or deposits of money which are donated for the purpose of supporting the activities of a Federal . . . officeholders." 11 CFR 113.1(a). This language covers circumstances where the NRSC makes payments to vendors in order that they may provide materials or services to participating Senators. Each NRSC payment on behalf of a participating Senator accordingly would trigger a reportable receipt of "funds donated" to the Senator by NRSC with a corresponding reportable disbursement by the Senator to the relevant vendor/payee. Even though NRSC will itself report the vendor payments, each Senator must report in the described manner since to the extent a payment is not an "a expenditure" under 2 U.S.C. 431(f) and 434(b)(9) and the beneficiary Senator is not a "candidate," the reports of NRSC are not required to identify the Senators on whose behalf the payments are made.

The Commission notes the possible application of Senate Rules to the facts related in your request but may express no opinion as to those issues. Nor does the commission express any opinion as to any Federal tax consequences of the described transactions since those issues are within the jurisdiction of the Internal Revenue Service.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)
Thomas E. Harris
Chairman for the
Federal Election Commission

Enclosures