



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 22, 1978

AO 1978-30

Ms. Ellen Maycock
318 Kearns Building
136 South Main Street
Salt Lake City, Utah 84101

Dear Ms. Maycock:

This responds to your letter of May 18, 1978, requesting an advisory opinion on behalf of the Firmage for Congress Committee concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act").

Specifically, you ask whether an individual may make three contributions of \$1,000 each to a candidate for congressional office in Utah since Utah holds a State party primary convention, a direct primary election, and a general election. You state that delegates to the state primary convention for each congressional district in Utah are authorized to select their party's nominees for Representative in Congress to run in the direct primary election.

Under 2 U.S.C. 441a(a)(1)(A) an individual may make a contribution to a candidate (or authorized political committee of a candidate) "with respect to any election for Federal office," which does not exceed \$1,000. The question at issue here is whether the Utah party primary convention constitutes an "election" as defined by 2 U.S.C. 431(a)(2), thus permitting an individual to make a separate \$1,000 contribution with respect to the party convention, the direct primary election, and the general election.

The Commission has previously held that the question of whether a party convention is an "election" having the "authority to nominate a candidate" under 2 U.S.C. 431(a)(2), must be determined from an analysis of state law regarding the power and role of such a nominating convention. Advisory Opinion 1976-58 (copy enclosed). Utah statutes provide that "delegates to said state primary convention from each congressional district in the state of Utah shall meet in congressional district primary conventions . . . and select the party's nominees for United States congressman to run at the regular primary election." Utah Code Annotated ("UCA") 20-4-4. The two candidates gaining the greatest number of votes at the party primary conventions "shall be declared the party's nominees to run at the primary election." UCA 20-4-9. However, if one candidate receives at least seventy per cent of the total votes cast, "he shall become the party's

candidate in the next general election without the necessity of running in the primary election." UCA 20-4-9. The Commission concludes that the Utah party primary convention is an "election" under 2 U.S.C. 431(a)(2); therefore, an individual may contribute \$1,000 to a candidate for Federal office with respect to the convention pursuant to 2 U.S.C. 441a.¹

Your question, whether an individual may contribute a total of \$3,000 to a congressional candidate (including an authorized political committee), is dependent upon the course of the particular candidacy. If a candidate for congressional office in Utah is selected by the party primary convention as one of two party nominees to run in the ensuing primary election, he or she is a candidate for two elections (convention and primary) and may accept contributions with respect to each under 441a. If that candidate succeeds in gaining the greatest number of votes in the primary election, and therefore becomes a nominated candidate for the November general election for that office, an individual may contribute \$1,000 with respect to each of three elections -- convention, primary, and general -- since the candidate for congressional office is a candidate in three separate elections.² If, however, the candidate for congressional office receives at least seventy per cent of the total votes cast in the party primary convention, or is unopposed as a candidate for the party's nomination in the party primary convention, he automatically becomes the party's nominee in the general election, omitting the direct primary election. See UCA 20-4-9. Thus, he or she is a candidate in only two elections (convention and general) and eligible to receive contributions under U.S.C. 441a with respect to only those two elections.³

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)
Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosure

¹ A qualified multicandidate political committee may contribute \$5,000 per election to a candidate for Federal office. 2 U.S.C. 441a(a)(2) and (a)(4).

² Reports would be required to be filed with the Clerk of the House under 2 U.S.C. 5434(a) and Part 104 of the commission's regulations with respect to each election in which the individual is a candidate.

³ The Commission notes that this opinion is based on the definition of "election" in 2 U.S.C. 431(a)(2), as amended May 11, 1976, by the Federal Election Campaign Act Amendments of 1976 (Public Law 94-283). Accordingly, the conclusions stated herein supercede Advisory Opinion 1975-54, as published in the Federal Register on December 18, 1975 at 40 FR 58802.