



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 5, 1978

AO 1978-46

Wayne J. Thorburn
Executive Director
Republican Party of Texas
1011 Congress Avenue, Suite 520
Austin, Texas 78701

Dear Mr. Thorburn:

This letter is in response to yours dated July 14, 1978, concerning the 1978 Republican State Convention of Texas and the party newspaper published by the Republican Party of Texas. Specifically, you ask whether Federal statutes, regulations or FEC Advisory Opinions exist which would limit:

- (1) solicitation of corporate advertisements in a printed program for the 1978 Republican State Convention of Texas;
- (2) sale of exhibit space by the convention to corporations;
- (3) advertising by corporations in the Party's monthly newspaper.

The Federal statute relevant to your questions is 2 U.S.C. 441b. This provision of the Federal Election Campaign Act of 1971, as amended prohibits:

- (1) Contributions or expenditures by national banks and Federally chartered corporations in connection with any election to Federal, State, or local political office, and
- (2) Contributions or expenditures by any corporation in connection with any Federal election or "in connection with any primary election or political convention or caucus held to select candidates for" the offices of President, Vice-President, Senator, and Representative in Congress, and
- (3) Knowing acceptance of such contributions by any candidate, political committee or other person.

Therefore, to the extent the Republican State Convention of Texas is for the purpose of influencing or "in connection with" a Federal election and funds paid by corporations for advertising or exhibit space are used to defray expenses of the convention, those funds would be corporate contributions or expenditures that are prohibited under 441b(a) as outlined above. Similarly, the Party newsletter could not be financed with proceeds from corporate ads to the extent its purpose is to influence Federal election or it is connected with a Federal election.

Nominations of Federal office candidates by the Texas Republican Party were required under Texas law to be made by primary election (held on May 6, 1978) rather than Party convention. However the Republican State Convention of Texas, may still be deemed to be, at least in part, for the purpose of influencing or "in connection with" a Federal election, Texas law provides that State conventions be held "between the first and third Tuesdays, exclusive, in September." Tex. Elec. Code, art. 13.35. The duties of the State convention are outlined in Texas law and primarily relate to candidates for State offices. The convention also announces "a platform of principles" and elects officers and members for the State executive committee of the Party. See Tex. Elec. Code, arts. 13.37, 13.38. The Texas statute does not preclude the State Convention from activities involving communications influencing the election of candidates to Federal office or otherwise connected with a Federal election. Therefore, if the State Convention provides a forum for candidates for Federal office involves (1) the solicitation, making or acceptance of contributions to a campaign for Federal office, or (2) any communication expressly advocating the election or defeat of a clearly identified candidate for Federal office, the Convention would be regarded as for the purpose of influencing and in connection with a Federal election. The prohibitions of 2 U.S.C. 441b would bar the financing of all Convention expenses with corporate treasury funds, but such funds could be used (assuming it is proper under Texas law) to defray Convention expenses that are not allocable to Federal election purposes.

In concluding that some expenses of the convention may be allocable as influencing Federal elections, the Commission would not require that such allocable amount be further allocated to specific candidates for Federal office. Specific Federal candidate allocation would only be necessary where a Convention expenditure was made on behalf of a clearly identified candidate for Federal office to whom it could be directly attributed. See 106.1 of Commission regulations. If the Convention has any relationship to Federal elections, as discussed above, the expenses allocable to Federal election purposes must be paid from the Texas Republican Party's Federal campaign committee established pursuant to 102.6(a) of Commission regulations. The amount of expenditures allocable to the Federal campaign committee may be determined by using the formula set forth in 106.1(e) of Commission regulations. Other allocation formulas are explained in the Commission's response to Advisory Opinion Request 1976-72 and in a guideline published in the FEC Record of December 1977. (Copies are enclosed.)

If the State Convention is related only to State elections and does not involve any activities bearing on Federal elections as discussed above, expenses of the Convention would not be expenditures under the Act. Therefore, they would not have to be reported (assuming they are paid by a non-registered party organization); nor would the prohibitions of 2 U.S.C. 441b apply except as to contributions by national banks and corporations organized by authority of a law of

Congress. (See also 2 U.S.C. 441e which bars contributions by foreign nationals in connection with an election to any political officer.)

Regarding the acceptance of corporate funds for advertisements placed in a monthly party newsletter of the Texas Republican Party, the Commission concludes that under the Act such funds would be contributions. However, if proper under Texas law, proceeds from corporate ads could be accepted by the Party and used for State or local election purpose.* The expenses of preparing, publishing, and distributing the newsletter would be regarded as Federal election-related if communications carried in the newsletter are for the purpose of influencing the election of any person to Federal office. Thus if any material published in the newsletter relates to Federal elections, expenses incurred for the newsletter need to be paid, on an allocated basis, from the Federal campaign committee of the Texas Republican Party. The formulas mentioned above may be used to compute the allocable amount. In addition, an allocation based upon the column inches (or space) devoted to Federal candidates as a class, without express advocacy of specific Federal candidates, may be used to determine the amount of expenses required to be paid and reported by the Federal campaign committee of the Party.

However, if the newsletter includes communications expressly advocating the election of defeat of a clearly identified candidate for Federal office, the expenses of the newsletter attributed to those communications (to be determined by an allocation formula based on columns or amount of space utilized for the communication in relation to the entire newsletter) must be treated as a general election expenditure of the Party under 2 U.S.C. 441a(d). It must be paid from funds of, and reported by, the Federal campaign committee pursuant to 110.7 of Commission regulations. See also §104.2(b). This conclusion follows from commission regulations on allocation which require that expenditures for "general administrative... and other day-to-day costs of political committees" have to be attributed to individual candidates for Federal office when they are "on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate". 11 CFR 106.1(c).

On the other hand, if the Party's newsletter is completely devoid of both general and specific communications relating to candidates for Federal office, the expenses of preparing, publishing and distributing it would not involve contributions or expenditures under the Act and Commission regulations.

Those portions of this opinion relating to the Party's newsletter supercede and modify, in part, the Commission's response to Advisory Opinion Request 1976-65, issued September 21, 1976.

* It appears that Texas Election Code, arts. 14.01(D), (E), 14.06, and 15.17 may be relevant.

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

Enclosures