



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 22, 1978

AO 1978-92

Anthony Troy
Mays, Valentine, Davenport & Moore
1101 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C.

Dear Mr. Troy:

This responds to your letter of November 15, 1978, requesting an advisory opinion on behalf of the Miller for Senate Committee ("the Miller Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the receiving and spending of funds with respect to a vote recount of the 1978 Senate election in Virginia.

Your letter explains that the Miller Committee is planning for a possible recount, subject to the outcome of the official canvass to be completed by November 27, 1978, and that fundraising must be conducted within a very short time period. You request an opinion on 4 questions:

1. Apart from the prohibition against contributions or expenditures made for recount purposes by corporations, labor organizations or national banks, see 100.4(b)(15) and 100.7(b)(17) of the Commission regulations, what other restrictions as to source or amount should apply to donations made to the Miller Committee to support the recount effort?
2. Could current officers and/or staff of the Miller Committee organize and operate a separate recount committee, which would receive and expend all funds required to support the recount effort? As a committee organized exclusively for recount purposes, and thus not operated as a "political committee" within the meaning of the Act, would this separate recount committee be required to report receipts and disbursements to the Commission, or be subject to any other requirements under the Act?

3. If the Miller Committee received and expended all funds for recount purposes, should donations for these purposes from political committees and individuals be reported to the Commission? If so, how would donations from political committees be reported -- by the donor committee, the Miller Committee, or both?
4. If the Miller Committee received and expended all funds for recount purposes, should expenditures made by the Miller Committee for these purposes be reported? If so, how should these expenditures be reported, e.g. in the aggregate, or on an itemized basis?

In response to question 1, Commission regulations provide in pertinent part that the terms "contribution" and "expenditure" do not include a gift, loan, advance, purchase, payment or distribution:

of money or anything of value made with respect to the recount of the results of a Federal election, or an election contest concerning a Federal election, except when made by an organization subject to the prohibitions of §114.2. 11 CFR 100.4(b)(15) and 100.7(b)(17)

This means that gifts, or loans or payments of money or anything of value that are made solely for the purpose of defraying the expenses of a Federal election recount are not contributions or expenditures under the Act and Commission regulations. The quoted regulations further indicate, however, that these gifts or payments may not be made by or accepted from a national bank, corporation, or labor organization; a separate segregated fund of a 441b organization is not prohibited by the Act or Commission regulations from making a donation or disbursement for the described purpose. See 2 U.S.C. 441b and Part 114 of Commission regulations. Since the described gifts are not contributions they would not be subject to the contribution limits of 2 U.S.C. 441a. Nor would they be subject to the restrictions of 2 U.S.C. 441c, 441e, 441f, and 441g.

As regards question 2, a separate organizational entity established solely for purposes of funding the recount effort would not become a "political committee" under the Act since its receipts and disbursements would not be contributions or expenditures.¹ Thus, such an organization would not be required to file a statement of organization and periodic financial reports. See 2 U.S.C. 433, 434. The fact that persons connected with the Miller Committee were the organizers and principals in a "separate recount committee" would not change this result.

By contrast and in response to questions 3 and 4, if the Miller Committee (a registered political committee as defined in 2 U.S.C. 431(d)) establishes any bank account for recount purposes, the receipts and disbursements of those accounts would be reportable transactions of

¹ As stated in responding to question 1, a separate recount committee could not accept funds or anything of value from a national bank, corporation or labor organization. 2 U.S.C. 441b.

the committee.² Under 2 U.S.C. 434(b)(7) a reporting political committee is required to disclose each "other receipt in excess of \$100 not otherwise listed" under 434(b). Commission regulations explain that any "other" receipt exceeding \$100 during the reporting period is required to be itemized giving the date and amount, identification (full name and address of principal place of residence) of the donor, occupation and principal place of business. 11 CFR 104.2(b)(7).

Disbursements made by the Miller Committee for recount purposes although not "expenditures" must also be included in the report filed for the period when the disbursements are made, since the regulations state that reports filed shall include "all receipts and disbursements" occurring within the period covered by the report. 11 CFR 104.2(b). Details such as identification of the payees and dates of each payment need not be itemized in the filed report; however, the total amount disbursed must be stated with an explanation that the amount was paid for expenses incident to a vote recount of the 1978 Senate election in Virginia.

Political committees which make donations to the Miller Committee for recount purposes should disclose on their reports the same information that would be required if the donation was a "contribution" subject to limit under 2 U.S.C. 441a. Commission regulations at 11 CFR 104.2(b)(4) require political committees that transfer funds to any "political committee or other political organization" to identify the recipient committee by full name and mailing address. Also, the amount and date of the transaction must be disclosed by the donor committee with an explanation that it is exempt from limits because it is made for recount purposes only.

The Commission notes that in view of the special treatment and exemption accorded funds received and spent for recount purposes, any resulting surplus of funds may not be used in any manner that would constitute a contribution or expenditure under the Act or regulations. Such funds could be used for purposes unrelated to Federal elections subject to any other applicable Federal or State statutes.

This response constitutes an advisory opinion concerning 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

² Any bank depository where the Miller Committee establishes an account for vote recount funds must be listed by the Committee in an amendment to its Statement of Organization unless that depository is already used by the Committee and previously disclosed. 2 U.S.C. 433(b)(9), 437b(a).