



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 20, 1979

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-7

Mr. Richard J. Coffee
Chairman
New Jersey Democratic State Committee
226 West State Street
Trenton, New Jersey 08608

Dear Mr. Coffee:

This is in response to your letter of January 20, 1979, requesting an advisory opinion on behalf of the New Jersey Democratic State Committee ("the State Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to funds received and disbursements made on behalf of activities undertaken by the State Committee in formulating and implementing an "Affirmative Action Plan" for selecting delegates to the 1980 Democratic National Convention.

You indicate in your request that the Democratic National Committee ("the DNC") has called upon each State Democratic party committee to adopt and implement an Affirmative Action Program for selecting delegates to the 1980 Democratic Presidential Nominating Convention and that each State party's plan must be submitted to the DNC by April 15, 1979. You cite §107.2 of the Commission's regulations which deals with the reporting obligations surrounding Presidential nominating conventions and ask whether the activities undertaken by a State political party committee to promulgate and implement such an Affirmative Action Plan in conjunction with the delegate selection process lie within the purview of that regulation. The Commission is of the view that §107.2 is not applicable to the activities suggested in your request since the reporting mandated by that regulation relates to activities directly incident to the staging of the convention and does not, as you have suggested, extend to the delegate selection process leading up to the convention. However, other provisions of the Act and regulations are relevant to the suggested delegate selection activity and will be discussed in the context of responses to the six questions posed in your request:

1. At what point in the Affirmative Action and Delegate Selection process would it be considered a federal election-related activity?

In the Commission's view, funds received and disbursements made for activities involved in formulating and implementing an Affirmative Action Plan for selecting delegates to the 1980 Democratic National Convention would not, in general, constitute "contributions" or "expenditures" within the meaning of 2 U.S.C. 431(e) and 431(f) since they are neither for the purpose of influencing the nomination or election of any person to Federal office nor for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention.¹ However, since the end to be served by the delegate selection process is the nomination of a party's candidate for President, the State Committee's expenses incident to such activity are clearly part of the 1980 Federal election process and may not be paid from contributions to the State Committee by corporations, labor organizations or national banks unless made from a separate segregated fund. See 2 U.S.C. 441b. In this regard, 441b(b)(2) provides that, for purposes of that section, the term "contribution or expenditure" includes any direct or indirect payment, by any of the organizations included in 441b(a), to a political party or organization in connection with any Federal election. In addition, 2 U.S.C. 441a would bar the use of contributions from foreign nationals to defray any of the costs of the described activity since 441a prohibits contributions from foreign nationals in connection with a convention, caucus, primary, general, special, or run-off election for any local, State or Federal public office. See 11 CFR 110.4(a).

The Commission stresses that the conclusion reached in response to this and subsequent questions is limited specifically to activities involved in the "formulation and implementation of an Affirmative Action Plan".

2. What activities within the process would be included as allocable expenditures? (e.g. staff salaries, office space, printed materials, meetings, etc.)

Presumably, this question refers to the allocation of administrative expenses which is required under 11 CFR 106.1(e) between a political committee's Federal and non-Federal accounts (See also 11 CFR 102.6(a)). In light of the response to Question 1, that expenses incurred in formulating and implementing an Affirmative Action Plan are in connection with a Federal election, the Commission concludes that none of these costs may be paid from contributions from any of the organizations included in 441b or from foreign nationals under

¹ Rule 6 of the Delegate election Rules for the 1980 Democratic National Convention indicates that the purpose of the suggested State Affirmative Action Programs is "to encourage full participation by all Democrats, with particular concern for minority groups, Native Americans, women, and youth, in the delegate selection process and all Party affairs".

The Preliminary Call for the 1980 Democratic National Convention, issued by the DNC on December 8, 1978, states that in order to insure that the requirements of Rule 6 are carried out each plan shall address itself to: (1) efforts to be made to publicize information on eligibility to vote and become a delegate, the time and location of each stage of the delegate selection process and where to get additional information; (2) organizational efforts, including financial and staff support, for the implementation of all requirements of the State Affirmative Action Plan; (3) educational efforts to encourage participation in the delegate selection process; and (4) establishment of Democratic constituency representation goals for the State Convention Delegation.

441e. Since payment of the costs of these activities are not "contributions" or "expenditures" under 2 U.S.C. 431(e) and (f), they need not be paid from the state Committee's Federal account; however, if these costs are paid from that account, they must be duly reported pursuant to 2 U.S.C. 434(b) and 11 CFR 104.2. (In this regard, see also responses to Question 4 and 5 which follow.)

3. Are there any expenditure limitations placed on a political party when undertaking this process?

The Commission concludes that there would be no limitation on the amount that could be spent by the State Committee on formulating and implementing an Affirmative Action Plan since, as discussed above, disbursements made for the activities would not constitute "contributions" or "expenditures" under 2 U.S.C. 431(e) and (f).

4. What would be the reporting requirements for receipts and expenditures associated with this process?

As noted above in response to Question 2, reporting obligations would attach to these activities only if the costs are paid from the State Committee's reporting Federal account. In that case, the requirements set forth at 2 U.S.C. 434(b) and Part 104 of the Commission's regulations must be met. If, on the other hand, the costs are paid from a source other than the State Committee's Federal account - albeit one which does not contain monies from any of the sources prohibited by 441b or 441e from making contributions in connection with Federal elections - the State Committee need not report funds received or disbursements made for these activities.

5. Must a separate bank account specifically designated for federally allowable contributions be maintained?

As noted in responses to Questions 2 and 4 above, the State Committee would not be required to defray the costs of the subject activity from its registered and reporting Federal account, i.e. with funds subject to all the limitations, prohibitions and reporting requirements of the Act (see 2 U.S.C. 434, 441a, 441b, 441c, 441e, 441f and 441g). However, since these costs may not be paid with funds containing contributions from any of the sources included in 441b or 441e, if the State Committee's regular non-Federal account contains contributions from corporate, union or national bank general treasury funds, or from foreign nationals, it would be necessary for the State Committee to establish a separate account for defraying the costs of the suggested activities. Funds put into such a special account would not be subject to the contribution limits of 441a, nor would the receipts or disbursements of such an account be reportable under the Act.

6. Are the receipts and expenditures incurred by a county attributed to the State Committee, or are they a separate and distinct activity and must be filed as such?

The Commission has concluded above that since funds received and disbursements made for the suggested activities are not "contributions" or "expenditures" within the meaning of 431(e) and

(f), they need not be reported unless paid from the Federal account of the registered Federal campaign committee of the State Committee. Similarly, payment of the costs of these activities by a county committee would be reportable only if the county committee is a "political committee" within the meaning of 2 U.S.C. 431(d) and the payment is made from such political committee's Federal account. Such payments would not in and of themselves trigger a registration obligation on the part of any unregistered party committee which undertakes such activity.

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