



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 18, 1979

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-26

The Honorable Charles E. Grassley  
U.S. House of Representatives  
1227 Longworth House Office Building  
Washington, D.C. 20505

Dear Congressman Grassley:

This is in response to your letter of May 11, 1979, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to your establishment of an exploratory committee to consider a possible "bid for the United States Senate in 1980."

Your letter states that you have established an Exploratory Committee ("the Committee") whose sole function will be "to get a pulse in the State of Iowa on the viability of my candidacy." The Committee has registered with the commission by filing an FEC Form 1 ("Statement of Organization for a Political Committee"); and while you have not made any official announcement of your Senate candidacy, you note that the committees will be raising funds to sustain itself. Under these circumstances, you ask whether you would be considered a Senate candidate for purposes of the Act and, hence, required to file an FEC Form 2.

Under the Act, a "candidate" includes an individual who has "received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his, nomination... or election, to such [Federal] office." 2 U.S.C. 431(b)(2). A "contribution" means a gift, subscription, loan, advance, or deposit of money or anything of value "made for the purpose of influencing the nomination for election, or election, of any person to Federal office." 2 U.S.C. 431(e).

A limited exception to the definition of contribution is recognized in Commission regulation §100.4(b)(1) where it is stated that the term contribution does not include:

Payments made for the purpose of determining whether an individual should become a candidate, such as those incurred in conducting a poll, if the individual does not otherwise become a candidate. If the individual otherwise subsequently becomes a candidate, the payments are contributions...regardless of the date the payments were made.

This exception was made so that an individual is not discouraged from "testing the waters" to determine whether his candidacy is feasible.<sup>1</sup> However, this narrow exception is not to be used to amass campaign funds that would be spent after the individual decides to actively pursue a candidacy, rather it is available only to determine political support for a potential candidacy through such activities as polling. Both §100.4(b)(1) and §100.7(b)(2), its parallel section for expenditures, are written in terms of "payments... made" to cover costs incurred for activity related to the determination of whether to become a candidate.

The Commission concludes therefore, that as long as funds received and payments made by the Committee are received and spent exclusively for determining whether you should become a Senate candidate, those funds would not presently be "contributions" or "expenditures" within the meaning of 431(s) and (f). Thus you would not be deemed a Senate candidate subject to the reporting requirements of 2 U.S.C. 434 provided that funds are raised and spent by the Committee solely for exploratory purposes. Moreover, until such time as those funds become "contributions" and "expenditures" under 431(e) and (f), the Committee would not be defined as a "political committee" and, hence, would not be required to register with the Commission and file reports pursuant to 434. Accordingly, if the Committee desires and if its activities are limited to "testing the waters," it may terminate its registration with the Commission pursuant to §102.4 of Commission regulations.

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)

Robert O. Tiernan  
Chairman for the  
Federal Election Commission

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<sup>1</sup> Federal Election Regulations, Communication from the Chairman, Federal Election Commission, H.R. Doc. No. 95-44, 95th Cong., 1st Session 40 (1977).