



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 13, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-41

I. Philip Sipser
Sipser, Weinstock, Harper, Dorn & Leibowitz
380 Madison Avenue
New York, New York 10017

Dear Mr. Sipser:

This refers to your letter of May 23, 1979, with attachment, requesting an advisory opinion on behalf of the National Committee for a Democratic Alternative ("the Committee") as to whether the Committee or the individuals associated therewith are subject to the provisions of the Federal Election Campaign Act of 1971, as amended, ("the Act") and Commission regulations.

According to your letter the purpose of the Committee is to stimulate debate on certain policies of the present administration. In addition, the Committee will prepare and distribute general information on the delegate selection process for the Democratic National Convention on a state by state basis.

One means used to accomplish the purpose of the Committee is to sponsor advertisements which solicit funds as well as express the views of the Committee. The advertisement included with your request, which is a prototype of your intended ads, is captioned in bold letters "Democrats who are disappointed in President Carter." The ad explains the purpose of the Committee to be "to seek a better Democratic candidate for President in 1980." President Carter is specifically mentioned as the Democrat to which an alternative is needed. Discussion of the Committee's disappointment with President Carter on various issues follows. The ad closes with a solicitation for contributions to operate an information center and to run similar ads.

Your letter states that given the present purpose and intent of the Committee, the nature of the activity thereof, and the content and purpose of the ad, it is the Committee's position that it (1) is not a political committee within the meaning of the Act; nor (2) does it come within the scope or purview of 434(b)(13) or 434(a)(1) of the Act or any other sections of the Act, and

therefore neither the Committee nor the individuals associated with the Committee, nor those who make contributions to it in excess of \$100, are required to register or file reports with the FEC.

Specifically, you ask whether either the Committee or individuals associated with or who make contributions to it exceeding \$100 during 1979 are subject to the Act and whether either said Committee or individuals must register and file reports with the Commission.

The Commission is of the opinion that the National Committee for a Democratic Alternative is a political committee within the meaning of the Act and is therefore subject to the registration and reporting requirements set forth therein. See 2 U.S.C. 431(d) and 11 CFR 100.14.

The term "political committee" is defined in 11 CFR 100.14 as "any committee, club, association, or any group of persons which anticipates receiving, or receives contributions, or makes expenditures, totaling more than \$1,000 in value during a calendar year." The Committee states that it does anticipate that it will receive contributions in excess of \$1,000 or will make expenditures in excess of \$1,000 during 1979. The term "expenditure" includes payments made for the purpose of influencing the nomination for election, or the election of any person to Federal office." Therefore, any amounts expended by the Committee to oppose President Carter's nomination for the office of President would be to influence the nomination and would clearly be statutory expenditures.

The basic thrust of the advertisement placed in the New York Times which the Committee intends to run again, or ads which are similar to it, is toward seeking a new Democratic Presidential candidate to run in 1980 as an alternative to President Carter who is a candidate for the nomination. The purpose of the ad is to influence the 1980 presidential election. Moreover, the ad indicates the Committee's dissatisfaction with an identifiable presidential candidate and its desire to seek a Democratic alternative candidate to President Carter. Funds expended to run the ad, which are not made with the cooperation or consent, or in consultation with or at the request or suggestion of a candidate or agent are independent expenditures. See 2 U.S.C. 431(p) and 11 CFR 109.1.*

A group soliciting funds and making expenditures which are expected to be in excess of \$1,000 for 1979, as would appear to be the case of the Committee, would qualify as a political committee for purposes of the Act and is subject to all registration and reporting requirements as well as all other provisions of the Act. See 2 U.S.C. 433 and 434, in particular 434(b)(13).

* One element of an "independent expenditure" is a communication expressly advocating the election or defeat of a clearly identified candidate. "Expressly advocating" means any communication containing a message advocating election or defeat, including but not limited to the name of the candidate, or expressions such as "vote for," "elect," "support," "cast your ballot for," and "Smith for Congress," or "vote against," "defeat," or "reject." 11 CFR 109.1(b)(2).

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