



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 5, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-43

Mr. Richard Grayson
1607 East 56th Street
Brooklyn, New York 11234

Dear Mr. Grayson:

This is in response to your letters of July 21 and 31, 1979, requesting an advisory opinion on the applicability of the Federal Election Campaign Act of 1971, as amended, ("the Act") to your candidacy in the New Hampshire Presidential Preference Primary.

Your letter states that you are a candidate for the nomination of the Democratic Party for the office of Vice President of the United States. You add that you are planning to circulate petitions to have your name on the ballot in "the 1980 New Hampshire Vice Presidential Preference Primary on the Democratic side." Since you are a candidate for Vice President, and since 100.6(b)(1)(ii) of Commission regulations speaks only of presidential preference primaries, you ask whether the "New Hampshire Vice Presidential Preference Primary" would be considered an "election" under the Act.

An "election" is defined in the Act to include a "general, special, primary, or runoff election". 2 U.S.C. 431(a)(1). Commission regulations go on to state that a primary election is an election held prior to a general election "as a direct result of which" candidates are nominated for election to Federal office, or which "is held to elect delegates to a national nominating convention." See 11 CFR 100.6(b)(1)(i), and (iii).

Under New Hampshire law, its presidential primary shall be held "for the purpose of determining the preferred candidates for president and vice president to be selected at the national conventions of the various political parties."¹ While New Hampshire law permits the separate designation of presidential and vice presidential candidates, the allocation of delegates among candidates is based upon the percentage of vote received by presidential candidates only, and only presidential candidates may designate delegates to be certified.²

¹ N.H. Rev. Stat. Ann. §58:1

² See N.H. Rev. Stat. Ann. §57:5, §57:8

The candidate of the Democratic Party for the office of Vice President is nominated at the Democratic National Convention, and not "as a direct result" of the New Hampshire Vice Presidential Primary. Furthermore, because the New Hampshire Vice Presidential primary does not elect delegates to a national nominating convention, the Commission concludes that such Vice Presidential primary is not an "election" under the Act or Commission regulations.

In the circumstances presented here, the "primary election" for candidates for the Democratic nomination for the office of Vice President is considered to be the Democratic National Convention since that convention has the authority to select a nominee. See 11 CFR 100.6(d) See also Advisory Opinions 1976-58, and 1978-30 copies enclosed. Therefore, limitations on contributions to Democratic Vice Presidential candidates apply separately with respect to two "elections", the Democratic National Convention and the general election. See 2 U.S.C. 441a. Similarly reporting requirements relating to the filing of 10 Day Pre-Election and 30 Day Post-Election Reports would be met with the timely filing of such reports before and after the two "elections" noted above. 2 U.S.C. 434(b). See also Commission regulations at 11 CFR 104.4.

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

Enclosures