



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 21, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-46

Ms. Ann Smith
Americans Organized for Responsibility
3509 Southwest Avenue (Number 1)
Sioux Falls, South Dakota 57105

Dear Ms. Smith:

This responds to your letter of August 1, 1979, requesting an advisory opinion on behalf of Americans Organized for Responsibility ("Americans") a political committee, concerning the applicability of the Federal Election Campaign Act of 1971, as amended ("the Act"), to contributions and donations which Americans plans to make to Federal candidates and United States Senators.

Your letter explains that Americans intends to become a multicandidate political committee pursuant to 2 U.S.C. 441a(a)(4) as soon as practicable. The three following questions are then presented:

1. If Americans contributes \$1,000 to a Federal candidate's primary election, and subsequent to that primary election Americans qualifies as a multicandidate committee, can Americans then contribute \$4,000 to that Federal candidate's primary campaign (assuming the candidate had a primary election debt in excess of \$4,000)?
2. In view of the fact that the Federal Election Campaign Act, as amended, defines "contribution" to include only funds used to influence the election of a Federal candidate, do funds donated for non-campaign office expenses pursuant to 2 U.S.C. 439a count toward the amount limitation of a "contribution" in 2 U.S.C. 441a(a)?
3. How should funds donated for office expenses be reported to the Federal Election Commission?

In response to question number one, the Commission concludes that if Americans contributes \$1,000 to a Federal candidate before that candidate's primary election and subsequent to the primary Americans qualifies as a multicandidate committee, Americans may then contribute up to \$4,000 to that candidate's primary campaign provided the candidate has a primary election debt of at least \$4,000 when the contribution from Americans is received. See 2 U.S.C. 441a(a)(2)(A), 11 CFR 110.2(a)(1) and 11 CFR 110.1(a)(2). Such post-primary contribution must, of course, be designated in writing as a contribution for the primary election. 11 CFR 110.1(a)(2)(i).

The second and third questions raised in your request concern donations to Senators to cover non-campaign expenses incurred in the ordinary course of carrying out their official responsibilities as Federal officeholders pursuant to 2 U.S.C. 439a. Specifically asked is whether such donations count toward the contribution limitations in 2 U.S.C. 441a(a) and the method of reporting such donations.

The limitations set forth in 441a(a) apply to "contributions". As defined in 431(e) "contribution" means "anything of value made for the purpose of influencing the nomination for election or election of any person to Federal office." "Funds donated", is defined, in part, to mean "all funds... which are donated for the purpose of supporting the activities of a Federal or State officeholder." 11 CFR 113.1(a). Thus, monies donated strictly for officeholder activity as provided in 2 U.S.C. 439a are not "contributions" for purposes of the Act but are, rather, "funds donated." As such, the Commission concludes that these donations do not count toward the dollar limitations on contributions set out in 441a(a). See Advisory Opinion 1977-50 (copy enclosed).

All disbursements made by Americans for "funds donated" to Senators must be reported by Americans on line 20a of Form 3 and on Schedule B giving the same details required for "expenditures" with an explanation that this amount is for officeholder expenses, not campaign activity. See 11 CFR 104.2(b) and 2 U.S.C. 434(b)(9) and (b)(14). Furthermore, the particular Senator to whom such funds are donated would be required to report that payment as a receipt. 2 U.S.C. 439a and 11 CFR 113.4. See also Advisory Opinions 1977-50, 1979-25 and 1979-11 (copies enclosed).

The Commission expresses no opinion as to possible application of the Standing Rules of the Senate to the situation you have described; neither does the Commission express any opinion regarding possible tax ramifications since these issues are outside its jurisdiction.

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