



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

March 10, 1980

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-5

Jesse H. Bankston, Chairman  
Democratic State Central Committee of Louisiana  
5700 Florida Boulevard, Suite 322  
Baton Rouge, Louisiana 70806

Dear Mr. Bankston:

This responds to your letter of January 7, 1980, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, an amended (the "Act"), to the selection of delegates to the 1980 Democratic national nominating convention.

You included with your request a copy of the rules for the delegate selection plan of the Louisiana Democratic State Central Committee (the "State Committee"). You ask specifically whether the Act and Commission regulations apply to expenses for qualifying and campaigning that are incurred by or on behalf of individuals who seek to be chosen as delegates pursuant to the Louisiana delegate selection plan.

Your request indicates that Louisiana will have a statewide presidential preference primary on April 5, 1980, for the purpose of determining the allocation of delegates to the 1980 Democratic national nominating convention. The primary election ballot:

will consist of the named of each candidate for the presidential nomination of the Democratic Party or the chairperson of slates listed in alphabetical order. Provision also shall be made on the ballot for electors of each party to vote for uncommitted delegates to the Democratic National Convention. Rule 5a; see also Rules 7a and 17.

The individual delegates will not be selected in the April 5 primary, but will be chosen in congressional district caucuses and in a state convention held respectively on April 19 and 26,

1980. Rules 5b, 5d, and 5e. The results of the April 5 primary will determine the allocation of delegates to particular presidential candidates. Rules 5 and 5a.

Your request and the delegate selection plan state that delegate candidates ("delegates") qualify as such either by filing nominating petitions or by payment of a \$100 fee to the State Committee. Rules 5e and 8. Candidates for delegate are also required to state in writing whether they wish to run as uncommitted to any presidential candidate, as a member of a slate of delegates, or as committed to a particular presidential candidate. Rule 8. Individuals seeking to run as committed delegates must be approved by the presidential candidate or chairperson of the delegate slate that he or she wishes to represent. Rules 5e, 7, and 8. The qualification period for all delegates opens and closes respectively on March 3 and March 22; the qualification period for presidential candidates and slates of delegates opens and closes respectively on February 25 and 29. Rules 7 and 7a.

With respect to your first question concerning delegates' expenses to qualify for selection by district caucus or state convention, the Commission concludes that payments made to the State Committee by individual delegates<sup>1</sup> for the purpose of qualifying as delegates would not be contributions or expenditures under the Act. Accordingly, there would not be any reporting obligation or contribution limit imposed on these payments. This conclusion is based on the definition of contribution in 2 U.S.C. 431(8)(A) which provides that contribution includes any gift or deposit of money made by any person for the purpose of influencing any election for Federal office. Payments made to the State Committee by individuals who seek to qualify for selection as delegates are not payments made for the purpose of influencing any person's election to Federal office since the office of delegate is not a "Federal office." 2 U.S.C. 431(3). The described payments by individual delegates are analogous to payments made by candidates for Federal office in order to qualify to have their names placed on a primary election ballot. These expenses are specifically excluded from the definition of "contribution" and "expenditure." 2 U.S.C. 431(8)(B)(xiii), 431(9)(B)(x).

With respect to the second part of your question concerning expenses for campaigning that are incurred by individuals who seek to be chosen as delegates to the Democratic National Convention from Louisiana, the Commission expresses the following opinion. Expenditures made by a delegate from contributions received by the delegate or from personal funds, to defray costs incurred in advocating only the delegate's own selection, would not be limited by 2 U.S.C. 441a nor would such expenditures need to be reported under 2 U.S.C. 434. However, delegates may not receive funds from corporations, labor organizations, national banks, or foreign nationals in connection with their campaign to be selected. See 2 U.S.C. 441b, 441e. In addition, contributions by individuals to an individual delegate are chargeable to the contributors \$25,000 annual limit under 2 U.S.C. 441a(a)(3).

Expenditures by the delegates for campaign materials (including pins, bumper stickers, handbills, brochures, posters and yard signs) used in connection with volunteer activity which

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<sup>1</sup> The Commission notes that individual delegates may not make these payments from funds given to them by national banks, corporations, or labor organizations since those entities are prohibited by 2 U.S.C. 441b from making contributions or expenditures in connection with an election to Federal office. See Advisory Opinion 1979-7, copy enclosed.

materials advocate the delegate's selection and also make reference to a presidential candidate are neither 1 limited nor reportable under the Act. See 2 U.S.C. 431(8)(xi). However delegate expenditures for use of public media (such as broadcasting facilities, newspapers, magazines, billboards, direct mail or similar types of general public communications or political advertising) to advocate both the delegate's selection and also refer to a presidential candidate, would be reportable by the delegate as an independent expenditure if such expenditures expressly advocate the election of a clearly identified presidential candidate and are not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, the presidential candidate or authorized committee of that candidate. See 2 U.S.C. 434(c) and 11 CFR 109.2(b)<sup>2</sup> If such an expenditure was made in cooperation, consultation, or concert with, or at the request or suggestion of the presidential candidate or his authorized agents the expenditure would be reportable by the presidential campaign committee and chargeable to contribution and expenditure limits, if applicable. 2 U.S.C. 441a(a)(7), 441a(b), and 11 CFR 110.1 110.8(a). Only that portion of the expenditure allocable to the presidential candidate is considered an in-kind contribution to that candidate and chargeable to the candidate's expenditure limits.

In the case where delegates campaign through the organization of delegate slates, a political committees would be created if expenditures exceed \$1,000 in a calendar year. 2 U.S.C. 431(4). As a political committee the delegate slate would be subject to all of the requirements of the Act relating to political committees. Specifically, the delegate slate committees would be required to register and file reports under the Act, and the contributions received and made by the committee would be subject to the contribution limits of the Act. 2 U.S.C. 431, 433, 434, 441a. In addition, the prohibitions on certain contributions would apply. 2 U.S.C. 441b, 441c, 441e, 441f, 441g. Furthermore, if the expenditures of a delegate political committee are made in circumstances similar to those described in the preceding paragraph (where individual delegates use public media for advocacy of their own selection but also refer to a presidential candidate), such political committee expenditures may be viewed as allocable independent expenditures or as allocable contributions in-kind and corresponding expenditures of the presidential candidate. 2 U.S.C. 434(b)(6)(B), 441a(a)(7), and 441a(b)(2); see also 11 CFR 110.8(b).

This response constitutes an advisory opinion concerning application of the Act, or regulation prescribed by the commission, to the specific transaction or activity 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>2</sup> The reporting threshold of the cited regulation is \$250, not \$100.