



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 10, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-103

Mr. David Price
Executive Director
North Carolina State Democratic Executive Committee
P.O. Box 12196
Raleigh, North Carolina 27605

Dear Mr. Price:

This responds to your letter of August 21, 1980, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to distribution of State tax checkoff monies by State political parties to candidates.

Your request explains that North Carolina maintains an election campaign fund. The source of this fund is one dollar designated for the fund on an individual's state income tax return. The individual may designate the political party for which it is intended. The campaign funds are then distributed to the State Chairman of the eligible political parties which have applied for such funds. The state statute provides for the distribution of funds depending upon the type of election year. The statute provides that one-half of the funds collected is disbursed to the political party; one-half is allocated by a committee and disbursed by the State Chairman to individual candidates for various state and Federal offices specified in the statute. The statute further provides that the allocation of funds to be disbursed to candidates of a party is to be made by a committee comprised of the State Party Chairman, Party Treasurer (ex-officio), and the candidates (nominees) for those same specified offices.¹ The committee has discretion as to the allocated amount for each eligible candidate.

¹ These are: Governor, Lieutenant Governor, United States Senate, United States House of Representatives, Council of State (Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, State Attorney General, State Commissioner of Agriculture, State Commissioner of Labor, State Commissioner of Insurance), North Carolina Supreme Court and North Carolina Court of Appeals.

The request explains that "the distribution formula" agreed upon by the Democratic committee this year results in an allocation of slightly over \$5,000 for each of the party's congressional candidates. Checks for only \$5,000 have been mailed to these candidates pending an advisory opinion. The question which you ask is whether the allocation constitutes a contribution subject to the \$5,000 limits on contributions to candidates from political committees found in 2 U.S.C. 441a.

It seems that the request focuses on 441a(a)(2)(A) which states that "no multicandidate political committee shall make contributions to any candidate... with respect to any election for Federal office which, in the aggregate, exceed \$5,000." The request suggests that the limitation should not apply since, according to the requestor, the State Executive Committee is simply acting as a conduit for funds controlled by the State Treasurer and does not control the allocation of funds to individual candidates. The Commission disagrees with this position.

Under the Act a contribution includes "any gift,... deposit of money or anything of value made by a person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A). The requestor suggests that the monies paid to the individual candidates are not contributions from the North Carolina State Democratic Executive Committee subject to the contribution limits in 2 U.S.C. 441a(a)(2)(a) since he says the State Party does not control the allocation and is simply acting as a distribution agent.

Although the North Carolina Election Campaign Fund is established by State statute and is funded by an individual dollar checkoff, the Commission is of the view that the State Party has a role greater than that of a ministerial distribution agent. The entire mechanism used to implement the statutory scheme directly involves the state party committee and the State Party Chairman. It is the Party Chairman who applies for the funds from the State. The funds pass through the State Party and the Chairman disburses the funds to the individual candidates in accordance with the decisions of an allocation committee composed of that same Party Chairman who serves as chairman of the committee, Party Treasurer and those party candidates who are eligible for funding under the State statute. Rather than the state statute specifying the allotments, it is this committee comprised of individuals who are either party functionaries or party nominees for the forthcoming general election that determines the amounts to be allocated.

In light of the described role of the State Party in the statutory scheme the Commission concludes that the monies disbursed to the individual congressional candidates are contributions from the State party² and as such are subject to the \$5,000 contribution limit of 441a.³

² The North Carolina State Democratic Executive Committee is a registered multi-candidate committee.

³ It should also be noted that pursuant to 2 U.S.C. 441a(d)(3) and 11 CFR 110.7(b), a state committee of a political party may also make expenditures in connection with the general election campaign of candidates for Federal office in that state. In addition to the \$5,000 contribution permitted under 2 U.S.C. 441a(a) (2) (A), the state committee may make expenditures in the 1980 general election which do not exceed \$14,720 with respect to each campaign for the office of Representative in North Carolina, and expenditures which do not exceed \$117,524.48 with respect to the campaign for the office of Senator in North Carolina.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Max L. Friedersdorf
Federal Election Commission