FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 24, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-119

Mr. James F. Schoener
Jenkins, Nystrom & Sterlacci, P.C.
2033 M Street N.W.
Washington, D.C. 20036

Dear Mr. Schoener:

This responds to your letter of October 3, 1980 requesting an advisory opinion on behalf of the National Republican Senatorial Committee ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to expenditures made on behalf of Senatorial candidates by the Committee for broadcast media reaching several states.

Your request refers to a prior advisory opinion request and related correspondence submitted on behalf of the Committee (AOR 1980-77) in which the file was closed. According to that prior correspondence and your letter of October 3, it appears that the Committee, as a designated agent of the Republican National Committee intends to make expenditures in connection with the general election campaigns of certain Senatorial candidates under 2 U.S.C. 441a(d). In making those expenditures the Committee desires to purchase television time in certain markets which will broadcast commercials into several states. You explain that the broadcast commercials would be clearly on behalf of the Senatorial candidate in one state without any content that would "pour over" to another race. You give the following example as a possible 30-second commercial:

> Voters of State A, next Tuesday you will be able to vote for John Doe, the Republican candidate for United States Senate. John Doe has served State A as its State Treasurer for 7 years and knows the problems of government and taxation. John Doe's ability can serve you well in the U.S. Senate. The preceding paid for by the National Republican Senatorial Committee, authorized by the Doe for Senate Committee.

Having provided this background the question you raise is whether in computing the amount of the 441a(d) expenditure, the Committee may use the proportionate amount of the cost involved in broadcasting into the candidate's state as compared to the total cost incurred.

Under the Act, the national committee of a political party may make expenditures not to exceed a designated amount in connection with the general election campaign for Federal office of a candidate who is affiliated with such party. 2 U.S.C. 441a(d)(3). The Republican National Committee has designated the Committee to make these expenditures ("441a(d) expenditures") on behalf of Republican Senatorial candidates. Your request asserts that if the Committee spent 441a(d) funds for a television broadcast in connection with the general election campaign of a Senate candidate running in State A, and the television station broadcast 50% of its signal to a listening audience in State B, only 50% of the total cost of that broadcast would be charged against the limit determined in accordance with 441a(d)(3) and 50% would be treated as a disbursement by the Committee. Such an assertion misconstrues the statute and the regulations.

Section 441a(d)(3) of 2 U.S.C. limits the "expenditures" which the national committee of a political party may make "in connection with the general election campaign of a [Federal] candidate" of such party. Section 431(9)(A)(i) defines "expenditure" to include:

> (i) any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office;

The expenditures which you describe -- payments for broadcast time of messages advocating the election of Senate candidates who are nominees of the Republican Party -- are "expenditures" within the definition of 431(9)(A)(i) regardless of the viewing or listening audience. As such, they must be considered 441a(d)(3) "expenditures" since party committees are deemed incapable of making "independent expenditures" (see 11 CFR 110.7(b)(4)), and the Act makes no other provision [i.e., other than 441a(d)(3)] for expenditures by national party committees in connection with general election Senate campaigns. See also 11 CFR 110.7(b). The right to make 441a(d) expenditures connected with a general election is an exception for political party committees permitting them to engage in certain activity that would otherwise result in a contribution to the candidate with respect to whom the expenditure was made. See H.R. Rep. No. 94-1057, 94th Cong., 2d Sess. 59 (1976).

Nothing in the language of either the Act or the Commission's regulations provides for calculation of an expenditure on the basis of its "political effectiveness" as proposed in the request. The statute states in part, that "the national committee... may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State..." which exceeds a given amount. 2 U.S.C. 441a(d)(a). The regulations, although stated in the form of what is permissible, generally track the statutory language. 11 CFR 110.7(b). Neither the Act nor the regulations provide for any "political effectiveness" calculation of an expenditure made under 441a(d) in connection with the election of one candidate.

Moreover, Part 106 of the Commission's regulations addresses allocations of candidate and political committee activities. There is no provision in Part 106 which would permit any allocation of a 441a(d) expenditure based on an expected benefit derived by the candidate from the expenditure. You mention 11 CFR 106.2(c) as a model for your proposal. Section 106.2 permits an expenditure by a Presidential candidate for use in two or more States, which cannot be attributed in specific amounts to each State, to be attributed to each State based on the voting age population in each State which can reasonably be expected to be influenced by such expenditure. Section 106.2, however, is applicable only to expenditures of Presidential candidates and was promulgated to implement 2 U.S.C. 441a(b)(1)(A) which sets forth both an overall expenditure limit as well as state expenditure limitations for Presidential candidates eligible to receive primary matching funds. Further, under 106.2 the entire Presidential expenditure is fully attributed against the limits. It does not have the effect, as does your proposal, of raising the overall amount that could be spent against the expenditure limitation.

In the absence of any provision in the Act or regulations permitting expenditures made under 441a(d) to be calculated in the manner proposed in the request, the Commission concludes that the Committee must attribute the full amount of an expenditure made in connection with the general election of a Senatorial candidate against the limit as determined in accordance with 2 U.S.C. 441a(d)(3).

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)

John Warren McGarry
Vice Chairman for the
Federal Election Commission

P.S. Commissioner Friedersdorf voted against approval of this opinion and will file a dissenting opinion at a later date.