



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

December 4, 1980

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-127

Mr. Edward E. Poliakoff  
Associate Counsel  
Democratic Party of South Carolina  
P.O. Box 11070  
Columbia, South Carolina 29211

Dear Mr. Poliakoff:

This responds to your letter of October 14, 1980, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to changing the filing status of the Democratic Party of South Carolina.

According to your request and reports filed with the Commission, the Democratic Party of South Carolina (the "Party Committee") which finances political activity in connection with both Federal and non-Federal elections, has established one political committee which is registered with the Commission. The Party Committee has reported all debts and obligations it has incurred for Federal and non-Federal election campaigns. You explain that the Party Committee is in the process of retiring its debts and determining the proportion of the debts attributable to Federal election campaigns. You say that about 25% of the amount of the debts were incurred for Federal elections.

You ask whether the Party Committee may establish a new account for state and local election activities and use the Party Committee's present account registered with the Commission exclusively as its Federal account. If so, may the Party Committee allocate to the new state and local account the proper proportion of the Party Committee's current outstanding debts and obligations incurred for non-Federal election campaigns?

The Commission concludes that the Party Committee may establish a new account for state and local election activity and use the present account registered with the Commission

exclusively for Federal activity. Moreover, a proper allocation of outstanding debts should be made between the two accounts.

Section 102.5 of the Commission's regulations provides that an organization, including a party committee, which finances political activity in connection with both Federal and non-Federal elections and which qualifies as a political committee under 11 CFR 100.5, shall select one of the following two options regarding accounts:

- (1) establish a separate Federal account in a depository. Such account is to be treated as a separate Federal political committee which shall comply with the requirements of the Act and only funds subject to the prohibitions and limitations of the Act are to be deposited in that Federal account, or
- (2) establish a political committee which shall receive only contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with Federal or non-Federal elections. Such committee shall register as a political committee.

The question which you ask is how a committee, which is functioning under the second option, may change to function under the first option.

In Advisory Opinion 1975-95, the Commission approved a proposed procedure for a political committee which supported Federal, state, and local political candidates to establish separate committees for state and Federal elections. In that case a state committee was established. The originally registered political committee was to transfer its cash balance to the committee for state (and local) elections and then terminate. A Federal political committee was also to be established before termination of the combined Federal-state-local committee.

While the existence of outstanding debts and obligations relating to both Federal and non-Federal election activity presents the different issue of apportioning debts, rather than distributing cash on hand, the cited opinion indicates that an initial selection of one organizational option pursuant to the Act may be changed at a later time. Moreover, nothing in the Act or regulations would prevent the Party Committee from establishing a new account for state and local purposes and continuing to use the registered account, but for Federal purposes only. The Party Committee now registered may not terminate due to its debts. See 2 U.S.C. 434(b)(8) and 11 CFR 102.3, 102.4. However, once it determines what proportion of debts are for state and local elections and what proportion are for Federal elections, the proper proportion should then be allocated between the new state and local account and the continuing Federal account.\* The change in use of account and allocation of debts should be reported by the registered Party committee in an amendment to its statement of organization and in its next required report of receipts and disbursements.

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\* This was the method suggested by the Commission in MUR 471, a closed compliance matter.

The Commission notes that this opinion should not be taken as approval of any specific allocation of outstanding debts. Rather, the Party Committee should determine the proportion of debts to be allocated to Federal and non-Federal activity and have sufficient documentation to support the reasonableness of that allocation. See generally 11 CFR 106.1.

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

Sincerely yours,

(signed)

Max L. Friedersdorf  
Chairman for the  
Federal Election Commission

Enclosure