



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 14, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-28

Albert P. Massey, Jr.
Chairman
Republican Committee of Chester County
21 South Church Street
West Chester, Pennsylvania 19380

Dear Mr. Massey:

This responds to your letter of March 18, 1980, supplemented by your letter dated March 28, 1980, in which you request an advisory opinion on behalf of the Republican Committee of Chester County ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to certain proposed newspaper advertising which advocates the selection of delegates to the Republican National Convention.

Your request indicates that the Committee wishes to advocate the selection of specified delegates to attend the Republican National Convention. Specifically, you request Commission response to the following questions:

1. Is it permissible for the Committee to make an expenditure to pay for newspaper advertising which advocates the selection of specified delegates to the Republican National Convention?
2. Is it permissible for the Committee to make an expenditure to pay for such advertising if it contains "an endorsing statement of these delegates by the incumbent Member of Congress, who is a candidate for re-election"?
3. If these expenditures are permissible, how should they be reported under the Act?

In response to your first question the Commission concludes that the Committee may pay for newspaper advertising which advocates the selection of certain delegates to attend the Republican National Convention. Such a payment would be an "expenditure" under the Act and Commission regulations. The term "expenditure" includes "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." 2 U.S.C. 431(9) (A)(i). The term "election" is defined at 2 U.S.C. 431(1)(B) to include "a convention or caucus of a political party which has authority to nominate a candidate." "Election" is also defined to include a primary election held for the selection of delegates to a national nominating convention of a political party. 2 U.S.C. 431(1)(C). Since the 1980 Pennsylvania primary election of the Republican party will select delegates to the Republican national convention which has authority to nominate a presidential candidate, the described payment by the Committee would be characterized as a payment made for the purpose of influencing a Federal election. Thus, it would constitute an "expenditure" under the Act.

If an expenditure for this purpose, either by itself or in combination with other "expenditures"¹ made by the Committee within calendar year 1980 aggregate in excess of \$1,000, the Committee would qualify as a "political committee" under the Act.² The term "political committee" includes, *inter alia*, any local committee of a political party which makes contributions or expenditures aggregating in excess of \$1,000 during a calendar year. 2 U.S.C. 431(4)(C).

If the Committee becomes a "political committee" by virtue of this proposed expenditure, it would be required to register with the Commission and to report this and all other expenditures made for the purpose of influencing a Federal election. See generally 2 U.S.C. 433, 434 and Parts 102 and 104 of Commission regulations as published on March 7, 1980, and found at 45 Fed. Reg. 15104 thru 15116. However, if the proposed newspaper advertising paid for by the Committee does not by itself or in combination with other 1980 "expenditures" or "contributions" put the Committee over the \$1,000 per calendar year threshold, the Committee would not be required by the Act to report the expenditure.

The Commission notes that your supplemental letter states that newspaper advertising on behalf of certain delegates was proposed by the Committee without any contact or consultation with any Presidential candidate or his campaign representatives. Therefore, the issue of whether the proposed payment constitutes an in-kind contribution to a Presidential candidate subject to the contribution and expenditure limitations of the Act is not presented. See 2 U.S.C. 441a(a)(7), 441a(b)(2)

¹ Although not applicable to the situation presented here, the Act has several exemptions from the definition of "expenditure" for various types of political party committee disbursements not aggregating over \$5,000 in a calendar year. See 2 U.S.C. 431(9) (B)(iv)(viii), (ix).

² Commission records indicate that the Republican Committee of Chester County is not currently registered as a political committee.

In response to your second question, wherein the same type of newspaper advertising is proposed but is accompanied by an endorsing statement of the delegates by an incumbent Member of Congress who is a candidate for re-election, the Commission concludes that payment by the Committee for such advertising is permissible. However, the payment would constitute an expenditure under the Act. Again, if, as a result of such expenditure, the Committee became a "political committee" under the Act, see 2 U.S.C. 431(4)(C), then the Committee would be required to register under 2 U.S.C. 433 and file reports as required by 2 U.S.C. 434.

Assuming that the purpose of the described newspaper advertising is to advocate the selection of certain delegates rather than to influence the election of the Member of Congress and further, that the text of the advertisement emphasizes the selection of the delegates rather than the re-election campaign of the Member of Congress, the expenditure by the Committee would not result in a corresponding contribution in-kind to the Member of Congress.³

If, by contrast, the content of the advertisement reflects an intent to influence the re-election of the Member of Congress, then a contribution in-kind might result. In that event, the contribution in-kind to, and corresponding expenditure by, the campaign committee of the Member of Congress would be subject to the reporting requirements of 2 U.S.C. 434 and 11 CFR Part 104 as well as allocation regulations at 11 CFR 106.1.

Thus, the Committee may pay for newspaper advertising which includes an endorsement of the named delegates by a Congressional candidate but such expenditure need not be allocated between the candidate for Federal office and the delegates unless the expenditure is made for the purpose of influencing the election of the Member of Congress. As was stated in response to question 1, the Committee would be required to report the expenditure only in the event that the expenditure, by itself or in combination with other expenditures made by the Committee during 1980, puts the Committee over the \$1,000 threshold for qualification as a "political committee" under the Act. 2 U.S.C. 431(4)(C).

Your third question regarding reporting requirements has been answered in the foregoing responses to your first and second questions.

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)

Robert O. Tiernan
Chairman for the
Federal Election Commission

³ Commission records indicate that the Republican candidate for Congress in the Committee's district is unopposed in the April 22 Pennsylvania primary.