



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 16, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-38

Ms. Sue E. Wadel
Treasurer
Allen for Congress
532 East Polk Road
Ithaca, Michigan 48847

Dear Ms. Wadel:

This responds to your letter of April 9, 1980, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the reporting of certain expenses incurred by the Allen for Congress Committee in the course of sharing computer costs with a state candidate committee. Your request sets forth the following facts:

The Allen for Congress Committee ("the Committee") and a completely separate candidate committee (Michigan state legislative candidate committee) entered into an agreement jointly to rent a computer and jointly to enter into the data bank of the computer voter information. In that part of the legislative and congressional districts overlapped, the committees determined that the expenses for the entering of the data along with that portion of the computer rent allocable to this overlapping area, would be split evenly between the campaigns, and that each campaign would personally bear the expense of data entry and rent allocable to areas not overlapping. To facilitate bookkeeping, the committees decided that the Committee would pay directly all entry costs (salaries for keypunchers, withholding, etc.) and that the state candidate committee would pay directly both the security deposit and rental payments for the computer, with each committee reimbursing the other for those costs assignable to them. This course of action has been followed to date. As the deadline for the April 15 report neared, the committees had not finished entering all of the various voter information desired (entry will probably be finished within a month), and hence have not been able to calculate the exact expenses to be charged each campaign. Therefore, the Committee has to date made all entry payments and the other organization has paid all computer expenses.

You first ask whether the Committee must report that a portion of the payments made for data entry are allocable to the state candidate committee and, if so, when and in what manner such reporting must be made. At the outset, the Commission notes that the agreement to share the expenses of the computer rental and data entry is permissible, provided that such costs are allocated between the respective committees in a manner that equitably reflects the actual use and benefit to each campaign. See 11 CFR 106.1 and 110.8(d)(3); Advisory Opinion 1978-67 (copy enclosed). In light of the agreement with the state candidate committee, the Committee's payments for data entry are not for the purpose of influencing the state candidate's election but rather for the purpose of influencing the election of Mr. Allen pursuant to 2 U.S.C. 431(8)(A)(i).

Therefore, the Committee must timely report all payments made during each relevant reporting period for data entry, as operating expenditures on behalf of Mr. Allen's campaign in accordance with 11 CFR 104.3(b)(2)(i). Any payments received by the Committee in the form of reimbursements from the state candidate committee for its share of the data entry costs are reportable by the Committee as receipts in the form of offsets to operating expenditures under 11 CFR 104.3(a)(3)(ix)(A)-(C). However, the state candidate committee is not a "political committee" as defined in 2 U.S.C. 431(4) and 11 CFR 100.5. Thus, any payments by the state candidate committee to the Committee for the purpose of defraying the state candidate's share of data entry expenses must be made with funds subject to the prohibitions and limitations of the Act. If the state candidate committee has accepted funds that would be prohibited as contributions under the Act, then the state candidate committee must either: a) establish a separate account into which only funds subject to the Act's limitations and prohibitions are deposited and from which such payments are made to the Committee; or b) demonstrate through a reasonable accounting method that whenever such payments are made, that the state candidate committee has received sufficient funds subject to the Act's limitations and prohibitions to make such payments to the Committee. Under either alternative the state candidate committee must, in addition, keep records which, upon request, shall be made available for examination by the Commission. See *e.g.*, 11 CFR 102.5(b)(1)(i)-(ii) and 100.7(a)(1)(i)(D) at 45 *Fed. Reg.* 15096, 15105-6 (March 7, 1980) effective April 1, 1980. The Commission notes that, at least as applied to the facts presented in your request, this opinion supersedes Advisory Opinions 1976-110 and 1978-67 (copies enclosed) with respect to payments from political organizations that are not "political committees" under the Act. The Commission expresses no opinion as to the effect of the laws of the State of Michigan on any such payments by the state candidate committee to the Committee.

Your second question asks whether the Committee must report its outstanding, but as yet incalculable, obligations to the state candidate committee for its share of computer rental and security deposit and, if so, when and in what manner such reporting must be made.

The Commission concludes that such outstanding obligations must be reported by the Committee. However, the precise manner in which such obligations must be reported depends upon whether the agreement between the committees was written or not. Payments made to the state candidate committee by the Committee for its share of the computer rental and security deposit constitute expenditures by the Committee on behalf of Mr. Allen's campaign. Under

11 CFR 100.8(a)(2), a written contract, promise or agreement to make an expenditure is an expenditure as of the date such contract, promise or obligation is made.

Therefore, if the agreement between the two committees to share expenses and reimburse one another is in the form of a writing, then the committee must report the obligation as an expenditure in the form of a debt (on Schedule D and on the appropriate summary page) as of the date of the writing. Where, as here, the precise sum of the obligation was not determined at the time of the writing and cannot be precisely calculated at the close of the reporting period, the Commission concludes that the Committee should make a reasonable estimate of the extent of its obligation and report such estimate as an expenditure in the form of a debt on Schedule D. Payments made by the Committee to discharge its obligations should be reported on Schedule B as expenditures when such payments are actually made. Any adjustment necessary to reflect a difference between the actual and the estimated expenditure should be made in subsequent reports in the form of a memorandum to Schedule D.

If, on the other hand, the agreement between the committees was not in the form of a writing, then the payments would be reportable as expenditures on behalf of Mr. Allen's campaign as of the date the payments are made. However, until the expenditure is made, the Committee must report the outstanding obligation to the state candidate committee according to the requirements stated in 11 CFR 104.11. The Commission expresses no opinion as to the effect of the law of the State of Michigan on such payments to the state candidate committee.

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. 2 U.S.C. 437f.

Sincerely yours,

(signed)

Robert O. Tiernan
Chairman for the
Federal Election Commission

Enclosures