



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

May 13, 1980

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-47

Dennis M. Devaney  
Randall, Bangert & Thelan  
1625 K Street, N.W.  
Washington, D.C. 20006

Dear Mr. Devaney:

This is in response to your letter of April 23, 1980, requesting an advisory opinion on behalf of the Conroy for U.S. Senate Committee ("the Committee") concerning preemption by the Federal Election Campaign Act of 1971, as amended ("the Act") of a Maryland statute which prohibits payments for "walk around services" on an election day.

Your letter states that the Committee has received several inquiries regarding the possibility of providing compensation and expenses to campaign workers engaged in distributing campaign literature, sample ballots, or other campaign material; transporting voters to the polls; manning phone banks; serving as poll watchers; and other legitimate campaign functions. The Committee would perform such services during the period between the Maryland primary held on May 13, 1980 and election day. You note that Article 33 §26-9.1 of the Maryland Code, effective July 1, 1979, prohibits the payment by a candidate or his committee of monies for "walk around services" or any other services as a poll worker or distributor of sample ballots performed on the day of election. You ask:

- 1) Whether payment of compensation and expenses to campaign workers for election services described above is a permitted expenditure under the Act, and;
- 2) Whether the Act preempts Maryland Code Article 33 §26-9.1 with respect to pre-election and particularly election day activities of campaign workers for Federal candidates who would receive compensation and expenses for services described above.

The Commission notes that Maryland Code Article 33 §26-9.1(a) provides:

No candidate, slate of candidates, political committee, political party, or any person acting on behalf of any of the foregoing, may at any time, directly or indirectly pay, or incur any obligation to pay, nor may any person receive, directly or indirectly any sum of money or thing of value in return for a political endorsement or for walk-around services or any other services as a poll worker or distributor of sample ballots, performed on the day of the election.

"Walk-around services" are defined, in relevant part, in §§26-9.1(b) and 26-16(a)(7) to include performing the following activities for money on the day of the election while the polls are open: distributing to any person any campaign literature such as pamphlets, circulars, cards, posters, advertisements, *etc.* concerning any candidate for public office; and communicating a voting preference or choice. The term "election" is defined in §1-1(a)(6) of Article 33 to include congressional elections. The term "candidate" is defined in §1-1(a)(4) to include any person who files a certificate of candidacy for public office, and §4A-1 and 4A-2 requires candidates for Federal office, including congressional candidates, to file such a certificate of candidacy. The term "political committee" is defined in §1-1(a)(14) to include any combination of two or more persons which promotes the success or defeat of any candidate submitted to a vote in any election. Thus, the Maryland statute would purport to apply to the Committee's activities as described in your request.

With respect to whether the Committee's proposed payments are permissible under the Act, the Commission has held on numerous occasions that candidates and political committees have wide discretion under the Act in deciding which expenditures will best serve their candidacies. (See 2 U.S.C. 432(e); Advisory Opinions 1978-2, 1978-5, 1977-1, 1976-64, 1980-29, copies enclosed). Similarly, the Commission concludes that the Act does not prohibit the Committee's proposed payments as described in your request. The Commission expresses no opinion as to lawfulness of the proposed "walk-around services" under Title 18 of the United States Code or under any other statute over which the Commission has no jurisdiction.

With respect to whether the Act preempts Maryland Code Article 33 §26-9.1 as applied to the Committee's proposed payments for election day services, 2 U.S.C. 453 provides that the Act and any rules prescribed thereunder "supersede and preempt any provision of State law with respect to election to Federal office." The constitutional underpinning of §453 is apparent from the supremacy clause of the Constitution which requires that where there is a clear collision between State and Federal law, or a conflict between Federal law and the application of an otherwise valid State enactment, Federal law will prevail. Hamm v. City of Rock Hill, 379 U.S. 306, 311-312 (1964). It will not be presumed that a Federal statute was intended to supersede the exercise of a given power by a State unless there is a clear manifestation of intention to do so, since the exercise of Federal supremacy will not lightly be presumed. Schwartz v. State of Texas, 344 U.S. 199, 202-203 (1952).

Commission regulations explain that the Act and regulations thereunder supersede and preempt State law only with respect to: the organization and registration of political committees

supporting Federal candidates, the reporting and disclosure of political contributions and expenditures to and by candidates for Federal office and political committees supporting them, and limitations on contributions and expenditures regarding Federal candidates and political committees. 11 CFR 108.7(b). The Commission concludes that the Maryland provisions are not preempted by the Act. (Compare Advisory Opinions 1978-54, 1978-66, 1978-24, copies enclosed.)

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

Enclosures (AOs 1978-2, 1978-5, 1977-1, 1976-64, 1980-29, 1978-54, 1978-66 and 1978-24).

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