



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 25, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-57

The Honorable Henry B. Gonzalez
U.S. House of Representatives
2252 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Gonzalez:

This responds to your letter of May 7, 1980, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to fundraising activity on your behalf by the Bexar County Democratic Party ("the Committee").

Your letter states that the Republican Party is seeking to place the name of Merle Nash on the ballot as its nominee for the 20th Congressional District of Texas. Mr. Nash decided, pursuant to state law, to attempt qualification by petition. You add that after you secured a court order requiring the Republican Party to permit inspection of Mr. Nash's qualifying petitions, you then moved to have the State courts declare him disqualified on the basis that his petitions were insufficient under Texas law.

Attached to your request is a letter from the Republican Party of Bexar County which you claim is evidence that "the legal expenses of my would-be opponent are being met by standard campaign fundraising tactics."¹ You have also enclosed copies of two statements issued by you which relate to these legal proceedings.

Specifically, your March 4, 1980 statement asks:

Why should it have taken a court order to get them [the Republican Party] to comply with the basic requirements of law and the public interest? The answer

¹ The Commission notes that this letter, signed by the Chairman of the Bexar County Republican Party, asks the recipient to contribute to the "Republican Legal Defense Fund" which is established "to provide our candidates with legal counsel"

can only be that they have contempt for the people of Bexar County and they had something to hide. The arrogance and contempt of the Republicans ought to be remembered, when they start talking about fairness or integrity or respect for the law. Lamar Smith² is a little Nixon.

Your public statement of March 19, 1980, explains your allegations:

All I am doing is asking that the courts examine the more blatant cases of lawbreaking by the Republicans, and call them to account.

If you were to examine these petitions closely, you would see that about half the signatures were supposedly gathered on just two days -- the day before the filing deadline and the day of the deadline. The representation that Nash, himself, supposedly gathered all the signatures on 16 of the petition sheets is ridiculous. Somebody else circulated most of those petitions and then he signed them, a clear violation of the oath he signed. That oath swears that he, Nash, personally circulated the petitions, I know for a fact that other people circulated petitions that Nash signed, because persons I personally know circulated the petitions and did not sign. Nash plainly violated his solemn oath and the law with it.

This was a case of blatant and wholesale violation of the Texas election laws. The Nash petition is not the only one that is deficient. The Republican petitions are not the only instance of gross and wholesale violation of election laws -- state and Federal, alike -- perpetrated by the Republican party. Somebody has to stand up and challenge this. That is what I am doing. The citizens of this City and this country have the right to expect that Lamar Smith obeys the law, and that he and his pals be called to account when they don't.

If anyone ever wondered why the Republicans wanted to hide those petitions, now they know.

Under these circumstances, you have asked whether "fundraising of this type in my own behalf" is permissible under the Act and Commission regulations. This raises the issue of whether the Committee may solicit funds on your behalf to defray the costs of legal proceedings undertaken by you to challenge the nominating petitions of your potential Republican opponent.³

The Commission observes initially that the situation presented here is distinguishable from previous advisory opinions which dealt with the question of funds raised for legal defense purposes. In Advisory Opinions 1979-37 and 1980-4, the purpose of the funds was to meet the legal expenses incurred in defending against proceedings brought against a candidate or a

² Materials submitted with the request indicate that Lamar Smith is chairman of the Bexar County Republican Party.

³ The Commission has learned that the Republican candidate, Merle Nash, for the 20th Congressional District of Texas was unopposed for the party's nomination.

Federal officeholder. In Advisory Opinion 1977-7, the purpose for which the funds were to be used was to defray personal expenses and not to influence an election. Here by contrast, the funds would be solicited by the Committee on behalf of a Congressional candidate who has initiated litigation against a potential general election opponent in circumstances which indicate that the action may have been undertaken for the purpose of influencing an election. A candidate's attempt to force an election opponent off the ballot so that the electorate does not have an opportunity to vote for that opponent is as much an effort to influence an election as is a campaign advertisement derogating that opponent. Moreover, since the litigation expenses incurred by you are not for the purpose of ensuring compliance with the Act, they are not exempt from the definition of contribution or expenditure under 2 U.S.C. 431(8)(ix) or 431(9)(vii). Thus, funds received by you from the Committee which have been obtained by the Committee in the circumstances set forth in your request would constitute contributions from the Committee. They would be reportable as such by your principal campaign committee under 2 U.S.C. 434 and would otherwise be subject to the limits and prohibitions of the Act. 2 U.S.C. 441a, 441b, 441c, 441e, etc.

The Act and Commission regulations would not preclude the Committee from soliciting otherwise lawful contributions which were then contributed to your principal campaign committee and used in connection with the described legal proceedings. Contributions to the Committee by any person are subject to a \$5,000 per year limit under 441a(a) if the Committee by virtue of the described activity (or in combination with other activity coming within the purview of the Act) became a "political committee" as defined in 2 U.S.C. 431(4) (C). In that event the Committee would be subject to the registration and reporting requirements of the Act. 2 U.S.C. 433, 434.

However, if a fundraising letter is sent by you on the Committee's letterhead to raise funds for the purpose of financing your ballot challenge against Mr. Nash, such activity would be viewed as fundraising for your campaign. Thus, all expenditures made for that solicitation and all contributions received as a result would be expenditures by and contributions to your principal campaign committee. As such they would be subject to all requirements of the Act and Commission regulations, including the reporting provisions of 2 U.S.C. 434. Moreover, the required statement indicating your authorization of the mailing, as specified in 2 U.S.C. 441d, would have to be included. Also see Commission regulations at 11 CFR 110.11(a)(1) as amended at 45 Fed. Reg. 15119 (March 7, 1980), effective April 1, 1980.

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)

Max L. Friedersdorf
Chairman for the
Federal Election Commission