



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

August 11, 1980

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-70

Dennis H. Nystrom  
Jenkins, Nystrom & Sterlacci, P.C.  
2033 M Street, N.W.  
Washington, D.C. 20036

Dear Mr. Nystrom:

This responds to your letter dated May 7, 1980 and your supplemental letter dated May 30, 1980, requesting an advisory opinion on behalf of the Committee for Independent Expenditures for Republicans ("the Committee") regarding application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to certain proposed activity of the Committee.

Your request states that the Committee is a political committee organized to make independent expenditures for the general election in 1980 and in connection with that purpose has designed and produced (or will soon do so) campaign materials and programs "completely independent of the candidate, his agents or committees." These materials may include television spots and newspaper mats and will be used by the Committee in making its own independent expenditures. You state that an individual has expressed a desire to purchase such materials from the Committee and publish them as his individual independent expenditures. The Committee proposes to sell such materials to the individual at market value or cost. Based on the described factual situation you ask for Commission guidance on three questions which will be restated and answered in sequence.

First, with regard to Committee campaign materials which the individual wishes to purchase from the Committee for use in making his own independent expenditures, you ask whether the fact that the material was prepared by the Committee must be disclosed as well as the fact that the individual is paying for the communication?

In response to your first question, the Commission concludes that the Act requires the individual purchasing the described advertisement for use in making his own independent expenditure to disclose his full name as well as a statement that the communication is not authorized by any candidate or candidate's committee. This conclusion is apparent from 2 U.S.C. 441d which provides, in part, that whenever any person makes an expenditure for the purpose of financing communications, through certain public media, expressly advocating the election or defeat of a clearly identified candidate, the communication must contain a specific disclaimer or statement of sponsorship. If the communication is not authorized by a candidate or a candidate's agent or a candidate's authorized political committee, that fact (the lack of authorization) must be disclosed along with the name of the person who paid for the communication. 2 U.S.C. 441d(a)(3). See also 11 CFR 110.11(a). The Act does not require in these circumstances that the name of the Committee be disclosed by the individual. The individual will have "paid" the Committee for the material that he then uses as part of his independent expenditure and will be required to report all his expenses for any independent expenditure that exceeds \$250 in a calendar year. 2 U.S.C. 434(c), 11 CFR 109.2.

Your second question is whether an individual who wishes to "purchase" material and programs produced by the Committee and pay for his own independent communication of the material may also make contributions to the Committee. Assuming that the Committee will, in fact, support more than one candidate for Federal office, and further, that any contribution the Committee receives would not invoke application of Commission regulations at 11 CFR 110.1(h)<sup>1</sup>, the Committee would come within the category of "any other political committee." As such it may receive otherwise lawful contributions of \$5,000 per calendar year from the described individual. 2 U.S.C. 441a(a)(1)(C). Moreover, it would be permissible for an individual to make a maximum contribution of \$5,000 to the Committee in a calendar year and also make independent expenditures in his own name. However, where, as here, an individual pays the Committee for campaign advertising materials which will be adopted and communicated as his own independent expenditure, the amount that the individual pays to the Committee for such Committee-produced materials constitutes a contribution from the individual to the Committee. See Advisory Opinions 1980-19 and 1979-76, copies enclosed. Thus, while the individual would be permitted to make independent expenditures and also make contributions to the Committee, any potential contribution by the individual to the Committee would be reduced by the amount he or she pays the Committee in exchange for Committee-produced materials.

In your last question you ask whether an individual can act as an official of the Committee and also make independent expenditures in his own name separate from the Committee's independent expenditure activity. As you know, the Act places no limitation on the

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<sup>1</sup> This regulation provides: A person may contribute to a candidate or his or her authorized committee with respect to a particular election and also contribute to a political committee which has supported, or anticipates supporting, the same candidate in the same election, as long as: (1) The political committee is not the candidate's principal campaign committee or other authorized committee or a single candidate committee; (2) The contributor does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of that candidate for the same election; and (3) The contributor does not retain control over the funds.

amount that an individual may spend to make qualified independent expenditures under 11 CFR 109.1(a). Similarly, political committees which make independent expenditures are not limited by the Act as to the amount of their independent expenditures. But see 26 U.S.C. 9012(f)(1) which relates to expenditures in presidential elections.<sup>2</sup> Thus, an individual's status as an official of a political committee which makes independent expenditures does not result in any limitation on the amount of that individual's independent expenditures using personal funds.<sup>3</sup> Commission regulations on independent expenditures address the factual situation where an individual loses his or her ability to make an independent expenditure. If an expenditure is "made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from ... the candidate's committee or agent," the expenditure will not qualify under 11 CFR 109.1(a) as an independent expenditure. 11 CFR 109.1(b)(4)(i)(B). The factual situation as described in your request does not appear to present a situation where the cited regulation would apply. Thus the Commission concludes that the Act does not preclude an official of the Committee from making independent expenditures in his or her own name using personal funds.

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

Enclosures (AOs 1980-19, 1979-76)

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

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<sup>2</sup> See also the petitions and briefs filed in the pending cases of: Carter Mondale Reelection Committee, Inc., Democratic National Committee v. FEC, Case No. 80-1842 (U.S. Court of Appeals D.C., filed July 23, 1980); Common Cause, et al. v. Harrison Schmitt, Carl Curtis, and Americans for Change, Civ. Act. No. 80-1609 (D.D.C., filed July 1, 1980); FEC v. Americans for Change, et al., Civ. Act. No. 80-1754 (D.D.C. filed July 15, 1980).

<sup>3</sup> An individual's independent expenditures are subject to the reporting requirements of the Act. 2 U.S.C. 434(c); 11 CFR Part 109.