



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 15, 1980

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-87

John W. Hetherington  
Counselor at Law  
299 Park Avenue  
New York, New York 10017

Dear Mr. Hetherington:

This responds to your letter of July 8, 1980, requesting an advisory opinion on behalf of the Pelham Republican Town Committee ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to certain proposed expenditures in support of Republican nominees for President and Vice President of the United States.

According to your letter, the Pelham Republican Town Committee is a part of the official Republican party structure and therefore appears to be a subordinate committee of a state committee. You also state that the Committee is contemplating the use of political advertising, specifically including direct mail and local newspaper advertising, in support of the Republican nominees for President and Vice President of the United States in the 1980 general election, with such expenditures not exceeding an aggregate amount of \$1,000 during calendar year 1980.

Your letter asks whether the Pelham Republican Town Committee may make expenditures in the form of direct mail and local newspaper advertising not exceeding an aggregate amount of \$1,000 during the calendar year of 1980 in support of Republican nominees for President and Vice President of the United States. The Commission concludes that under the Act and Commission regulations, the Committee may make the proposed expenditures for newspaper and direct mail advertising only if it is a designated agent of the national committee of the Republican Party and if the national committee reports such expenditures.

Under 2 U.S.C. 441a(d)(1) "... the national committee of a political party and a state committee of a political party, including any subordinate committee of a state committee, may

make expenditures in connection with the general election campaign of candidates for Federal office, ...". With respect to the campaign for the office of President and Vice President, the national party committee may make expenditures for candidates affiliated with the party for these offices only if such expenditures do not exceed "... an amount equal to 2 cents multiplied by the voting age population of the United States...". 2 U.S.C. 441a(d)(2), 11 CFR 110.7(a)(1) and (2). Commission regulations state that "[t]he national committee of a political party may make expenditures authorized by this section through any agent, including state and subordinate party committees." 11 CFR 110.7 (a)(4).

Therefore, the Commission concludes that the specific transaction in question involving expenditures in the form of direct mail and local newspaper advertising by the subordinate committee of a state party committee would be permissible under the Act and Commission regulations if the subordinate committee is authorized by the national committee as a designated agent, and if such expenditures are both charged against the overall national committee expenditure limitation and reported by the national committee. 2 U.S.C. 441a(d)(1) and (2); 11 CFR 110.7(a)(4), 109.1(d)(2) and 104.3(b)(1)(viii).

Prior to the enactment of the 1979 amendments to the Act and the promulgation of regulations implementing those amendments, the described expenditure (not exceeding \$1,000) by the town committee could have been made in support of the party's nominees for President and Vice President without regard to the limits of 2 U.S.C. 441a(d). See 11 CFR 110.7(b)(5), Revised as of May 1, 1977. However, the 1979 amendments to the Act and revised (as of April 1, 1980) Commission regulations which clearly delineate the role of subordinate committees of a state party, as defined in 11 CFR 100.14, with regard to Federal elections no longer provide an exemption for such an expenditure by a subordinate committee.\*

As a result of the 1979 Amendments, the Act and Commission regulations now include several exemptions to the definition of "contribution" and "expenditure" that enhance political participation by state or local party committees in presidential elections. For example, under 2 U.S.C. 431(8)(B)(x) and 431(9)(B)(viii), certain payments by a state or local party committee may be made without limitation for "the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, party tabloids, and yard signs) [which are] used by such committee in connection with volunteer activities on behalf of nominees of such party..." provided certain specified conditions are met. 11 CFR 100.7(b)(15) and 100.8(b)(16). One of the specified conditions to qualify for the exemption is that the payment may not be for direct mail and newspaper advertising. However, Commission regulations define direct mail as "mailing(s) by a commercial vendor or any mailing(s) made from commercial lists" only. 11 CFR 100.7(b)(15)(i) and 100.8(b)(16)(i). If the specified types of campaign materials are distributed by volunteers, or if mailings of such materials are made from contributor lists, the costs are not considered as a "contribution" or "expenditure" under the Act. See the Explanation and Justification for the Commission's regulation defining "direct mail." 45 Fed. Reg. 15081 (March 7, 1980), copy enclosed.

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\* See generally 2 U.S.C. 431(15), 431(8)(B)(v), (x) and (xii), 431(9)(B)(iv), (vii) and (ix); 11 CFR 100.14, 100.7(b)(9), (15) and (17), 100.8(b)(10), (16), and (18), 109.1(d)(2), 110.7(a)(1), (4), and (5) and 110.7(b)(4).

In addition, 2 U.S.C. 431(8)(B)(xii) and 431(9)(B)(ix) contain similar exemptions for "the payment by a state or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of nominees of such party for President and Vice President...". See 11 CFR 100.7(b)(17) and 100.8(b)(18). This exemption is subject to specified conditions similar to those mentioned in the previous exemption. There is no limitation under either exemption as to the amount of funds which can be spent on such activities. Nor do the costs for the exempted activities cause the party committee to become a "political committee" under the Act if those costs do not exceed the aggregate amount of \$5,000 in the calendar year. 2 U.S.C. 431(4)(C), 11 CFR 100.5(c).

A recent Supplement to the FEC Record provides information as to state and local party activity permitted under the Act. A copy is 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)

Max L. Friedersdorf  
Chairman for the  
Federal Election Commission

Enclosures (August 10 Supplement to FEC Record for party organizations and copies of pages 15081 of Fed. Reg., March 7, 1980.)