



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 19, 1980

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-95

Daniel Murphy, President  
First National Bank of Florida  
Post Office Box 1810  
Tampa, Florida 33601

Dear Mr. Murphy:

This responds to your letter of July 29, 1980 and your supplemental letter dated August 6, 1980, requesting an advisory opinion on behalf of the First National Bank of Florida, a member of First Florida Banks, Inc., concerning application of the Federal Election Campaign Act of 1971, as amended, ("the Act") and Commission regulations to proposed activity by the Bank.

You state in your letter of July 29, 1980, that the bank has been approached for a contribution to a fund which purchases advertising to promote adoption of certain amendments to the State of Florida Constitution at an upcoming election. You state in your supplemental letter of August 6, 1980, that the fund in question is identified as "5 for Florida's Future" and that it is being established at the request of Governor Graham for the express purpose of promoting the adoption of the five amendments to the State of Florida Constitution. You state further that the Governor's goal is to raise \$500,000 which will be used primarily for television, newspaper and billboard advertising. In your supplemental letter of August 6, 1980, you also state that the five amendments are to be proposed for ratification in conjunction with a primary run-off election to nominate various local, state and Federal officials. However, as indicated in your letter, none of the monies raised for the fund will be applied to the election campaigns of these officials.

You ask specifically whether it is lawful under the Act for a national bank to make a contribution to a fund, whose express purpose is to promote the adoption of five amendments to the Florida Constitution (through television, newspaper, and billboard advertising) and which will be ratified in conjunction with a primary run-off election to elect various local, state and Federal officials.

The Commission concludes that the proposed contributions would not be prohibited under the Act or Commission regulations. Under 2 U.S.C. 441b(a) "[i]t is unlawful for any national bank, ... to make a contribution or expenditure in connection with any election to any political office, ...". Also see 11 CFR 114.2(a). However, 2 U.S.C. 441b(b)(2) states that:

[f]or purposes of this section ... the term "contribution or expenditure" shall include any direct payment, distribution, loan, advance, deposit, or gift of money, or any service, or anything of value to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section, ... (emphasis added).

The First National Bank of Florida is being asked to contribute money to a fund whose express purpose is to promote or influence the adoption of amendments to the Florida Constitution, as opposed to a contribution to a fund in connection with the election of candidates to any political office. Therefore, the contribution in question does not fall within the purview of the Act as it relates only to ballot referenda issues and not to elections to any political office.

The Commission notes also that the question raised in this advisory opinion is virtually identical to the issue raised in National Bank of Boston et. al. v. Bellotti, 435 U.S. 765 (1978) (hereinafter "Bellotti,"). In Bellotti, the Supreme Court held a portion of a Massachusetts statute unconstitutional as violative of the first amendment, as applicable to the states by the fourteenth amendment, because it prohibited banks and corporations from making contributions or expenditures "for the purpose of ... influencing or affecting the vote, on any question submitted to the voters other than one materially affecting any of the property, business or assets of the corporation." 435 U.S. at 768.

In that case, the Court drew a distinction between a corporation making statements on issues of general public interest and a corporation's participation in political campaigns for election to public office. See generally, Bellotti 435 U.S. 786-795. The Court in Bellotti, specifically notes the inapplicability of the Federal law, 2 U.S.C. 441b, to referendum votes. 435 U.S. 788 n. 26. The Commission accordingly concludes that the proposed activity in question is lawful under the Act.

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