



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 24, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-3

Ms. Ann M. Robinson
c/o The Spokesman
Box 1964, 115 N. Center Street
Casper, Wyoming 82602

Dear Ms. Robinson:

This responds to your letter of January 8, 1981, as supplemented by letter of February 9, requesting an advisory opinion on behalf of The Spokesman, the official organ of the Democratic Party of the State of Wyoming, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the acceptance of corporate and business checks for advertising in The Spokesman.

According to your letters, The Spokesman is published quarterly with a special 5th edition in October during election years. In the past the costs of publication have been absorbed by the Democratic Party of Wyoming. The party will continue to absorb the costs if adequate advertising or donations cannot be obtained to cover the costs of publishing. To this point The Spokesman has operated under the policy that checks for advertising must be drawn on personal accounts and that The Spokesman could not accept business or corporate checks.¹ Moreover, under that policy all funds for advertising are considered to be contributions. Currently, all checks for advertising space, whether made payable to The Spokesman or to the Party are deposited in the same party account.

From the copies of the two issues of The Spokesman which you provided to the Commission it appears that advertising usually takes block form and simply mentions the name of the business, proprietor, and business location. You explain that under the restrictive policy that allows only personal checks to be accepted for advertising, The Spokesman is not able to break even on the cost of publication. If business or corporate checks could be accepted you anticipate that sufficient advertising could be sold to defray most publication costs. Thus, you

¹ Wyoming law prohibits corporate, labor organization, and business contributions. See the Wyoming Election code of 1973, as amended, §22-25-102.

ask if there is any way in which business or corporate checks could be accepted for advertising. You also ask if advertisers may claim the cost of advertising as a business expense.

At the outset it is necessary to set forth those prohibitions and limitations in the Act which are relevant to your request. Specifically, under 2 U.S.C. 441b it is unlawful for any, national bank or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to Federal, State or local office. It is also unlawful for any corporation or labor organization to make any contribution or expenditure in connection with any Federal election. See also the prohibitions on contributions by Government contractors and foreign nationals. 2 U.S.C. 441c and 441e.

In the case of permissible sources of contributions and expenditures, the Act limits the amounts of these contributions. 2 U.S.C. 441a. Thus, a permissible contribution by a person or business which is not incorporated, such as a partnership or sole proprietorship, is subject to the limits of 441a. See also 11 CFR 110.1. Therefore, to the extent that publication of The Spokesman is "for the purpose of influencing" or is "in connection with" a Federal election and funds paid by corporations or labor organizations for advertising are used to defray the expenses of The Spokesman, those funds would be contributions or expenditures that are prohibited under the Act. All other funds from permissible sources would be subject to contribution limits.

The Commission has in the past addressed a similar situation involving the financing by advertising of a State Party newsletter. In Advisory Opinion 1978-46 (copy enclosed) the Commission concluded that the acceptance of corporate funds for advertisements placed in a monthly party newsletter constituted contributions under the Act. However, the opinion went on to state that, if proper under State law, proceeds from corporate ads could be accepted by the Party and used for State and local election purposes. Moreover, the expenses of preparing, publishing, and distributing the newsletter would be regarded as Federal election-related if communications carried in the newsletter would be regarded as for the purpose of influencing the election of any person to Federal office or in connection with a Federal election. Thus, the Commission concluded that if any material published in the newsletter related to Federal elections, expenses incurred for the newsletter would need to be paid, on an allocated basis, from the Federal campaign committee of the State Party.

As in Advisory Opinion 1978-46, the Commission here concludes that amounts paid for advertising in The Spokesman do constitute contributions. However, the costs of the Party publication can be allocated between those costs that are State and local election-related and those that are Federal election-related. Those that are determined to be allocable to Federal elections must be paid from the Federal campaign committee of the Wyoming Democratic Party which contains funds from only permissible sources under the Act. The amount allocable to the Federal campaign committee for payment and reporting may be determined by using the formula set forth in 106.1(e)² of Commission regulations or by an allocation based upon the column

² 11 CFR 106.1(e) reads:

Party committees and other political committees which have established Federal campaign committees pursuant to 11 CFR 102.5 shall allocate administrative expenses on a reasonable basis between their Federal and non-Federal accounts in proportion to the amount of funds expended on Federal and non-Federal elections, or on another reasonable basis.

inches (or space) devoted to Federal candidates as a class, without express advocacy of specific Federal candidates.

To summarize, payment of the costs of The Spokesman can be allocated between State and local elections and Federal elections. The amount allocable to Federal elections must be paid for from sources permissible under the Act which are contained in the account of the Federal campaign committee.³ Corporate funds could not be used to defray the costs of the Federal portion. "Business" (e.g., partnerships or sole proprietorships) funds however, may be used to defray the cost of the Federal portion if they are not given by a prohibited source, such as a corporation or labor organization, and do not exceed limits in 2 U.S.C. 441a.

Since this opinion is based only upon the Act, it should not be interpreted as removing any prohibitions which may be imposed under the Wyoming statutes with regard to State and local elections. As for your second question, whether the payment for advertising may be claimed as a business expense, rather than being characterized as a political contribution, that issue is beyond the jurisdiction of the Commission. For your information, see 276 of the Internal Revenue Code of 1954, as amended.

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 our request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosure

³ Under 11 CFR 100.8(b)(16) a state committee of a political Party may under certain circumstances pay the costs of campaign materials such as party tabloids or newsletters if the portion of the cost of such materials allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act.