



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

August 13, 1981

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-29

Frank R. Coppler, Esq.  
Coppler & Walter Attorneys at Law  
645 Don Gaspar  
Santa Fe, New Mexico 67501

Dear Mr. Coppler:

This responds to your letter of June 30, 1981, supplemented by your letter of July 15, 1981, requesting an advisory opinion on behalf of Arthur E. Trujillo concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act").

In your letter dated July 15, 1981, you state that Mr. Trujillo is a possible candidate for United States House of Representatives from New Mexico. Specifically, you ask whether New Mexico's pre-primary nominating convention would constitute a separate "election" for purposes of computing the Act's \$1,000 limitation on contributions by individuals.

Pursuant to 2 U.S.C. 441a(a)(1)(A), an individual may make a contribution to a candidate (or his or her authorized political committees) "with respect to any election for Federal office" which does not exceed \$1,000. The Act defines the term "election" to include "a convention or caucus of a political party which has authority to nominate a candidate." 2 U.S.C. 431(1)(B) (emphasis added); see also 11 CFR 100.2(e). The Commission has previously held that the question of whether a party convention is an "election" with "authority to nominate a candidate" turns on an analysis of State law regarding the power and role of such a convention in the nomination of candidates for Federal office. See Advisory Opinions 1976-58, 1978-25 (Part B), 1978-30, copies enclosed.

The Commission's review of New Mexico law indicates that the pre-primary nominating convention of a major political party does not have authority to nominate candidates for the United States House of Representatives. Under the relevant New Mexico statute, every House candidate receiving twenty percent or more of the votes of the convention delegates shall be certified to the Secretary of State as a convention-designated nominee for the House of

Representatives. 1-8-38(C) New Mexico Statutes Annotated ("NMSA") 1978. The names of candidates so designated by the state party convention are then placed on the primary election ballot. 1-8-21 NMSA 1978. A house candidate who fails to obtain the requisite twenty percent of the delegate vote to qualify as a convention-designated nominee is not, however, precluded from appearing on the primary election ballot. Such a candidate may obtain ballot access by filing a nominating petition as specified at 1-8-39 NMSA 1978.\* Moreover, New Mexico law makes it clear that "no convention shall declare that any one candidate has received the nomination of the state convention." 1-8-38(D) NMSA 1978. Rather, the major political parties may nominate their candidates only by secret ballot at the next succeeding primary election, which is held upon proclamation by the Governor of the State of New Mexico. 1-8-11, 12 NMSA 1976. Thus, under New Mexico law, the pre-primary convention may not select the party's nominee, thereby obviating the need for a primary election, but serves instead simply as an alternate method of obtaining access to the primary election ballot. Compare Advisory Opinions 1976-58, 1978-30, copies enclosed.

Accordingly, the Commission concludes that New Mexico's pre-primary nominating convention would not constitute a separate "election" under 2 U.S.C. 431(1)(b) and 441a(a)(1)(A). Rather, the pre-primary nominating convention constitutes a step in the primary election campaign. Contributions received by a House candidate in connection with the convention would therefore constitute contributions in connection with the primary election and would be subject to the \$1,000 limitation on contributions by individuals under 2 U.S.C. 441a(a)(1)(A). A separate contribution limitation would apply to a candidate for his or her general election campaign under 441a(a)(1)(A).

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\* 1-8-39 NMSA 1978 provides, in pertinent part:

A. Anyone who has been certified by the secretary of state as a candidate for convention designation but does not receive at least twenty percent of the delegate vote may have his name printed on the primary election ballot as a candidate for that office provided that no later than fifty days before the primary election he shall file a declaration of candidacy and nominating petitions in the form prescribed by Section 1-8-30 NMSA 1978 containing: . . .

(2) the signatures of voters totaling not less than one per cent in each of five counties with a total of three per cent district wide of the total number of votes cast in the district by that party for governor in the last preceding primary election at which the party's candidate for governor was nominated, in the case of a candidate for United States representative.

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)

John Warren McGarry  
Chairman for the  
Federal Election Commission

Enclosures (AO 1976-58, 1978-25 (Part B), 1978-30)