



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 28, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-35

The Honorable William M. Thomas
House of Representatives
Washington, D.C. 20515

Dear Congressman Thomas:

This refers to your letter dated August 3, 1981, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended, ("the Act") and Commission regulations to a committee involved in reapportionment related activities in California.

You indicate in your request that you and several Republican congressmen from California have formed a committee, tentatively named "the California Republican Congressional Reapportionment Committee," which will "finance activities related solely to the Congressional reapportionment process in California." The committee's resources, you state, will be used to pay for computer services, including computer time and personnel, to gather demographic data on several California congressional districts, and on court costs incurred in legal challenges to reapportionment plans. You indicate that no resources of the committee will be expended in "direct or indirect support of specific candidates, federal or otherwise."

You ask, based on the information included in your request, whether the committee will be required to register with the Commission as a political committee and file reports of its activities. In addition, you ask whether contributors to the committee will be subject to the contribution limitations and reporting requirements of the Act. Finally, you ask whether the committee may accept corporate contributions to finance its activities.

The Act defines a "political committee" as "any committee, club, association or group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year . . ." 2 U.S.C. 431(4); 11 CFR 100.5. The term "contribution," as defined in the Act, includes in part "any gift,

subscription, loan, advance, or deposit of money, or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A); 11 CFR 100.7(a)(1).

The influencing of Federal elections by persons and organizations is regulated by the Act and the Commission's regulations. The influencing of the reapportionment decisions of a state legislature, although a political process, is not considered election-influencing activity subject to the requirements of the Act. The Constitution of the United States, Article 1, Section 2, Clause 3, mandates the orderly reapportionment of Congressional seats based on the results of the decennial census.¹ It is thus incumbent on each state that loses or gains Congressional seats, to make the necessary decisions with regard to reapportionment. Essential aspects of the Federal election process for Congressional office are, in turn, dependent upon those decisions. Attempts to influence a state legislature's decisions on reapportionment plans may have political features, but are not necessarily election-influencing activity of the type subject to the Act and regulations. Similarly, the committee's financing of litigation which relates to reapportionment decisions made by the California legislature would not be viewed as election influencing under the Act and Commission regulations. Such litigation is distinguishable from that instituted by one candidate to disqualify an opposing candidate from the election ballot. The Commission has stated that such litigation represented an effort to deny the electorate the opportunity to vote for the opposing candidate and was thus for the purpose of influencing an election. See Advisory Opinion 1980-57, copy enclosed.

Assuming that the committee intends to limit its activity solely to the reapportionment-related activity described in your request, the Commission concludes that no contributions or expenditures would be made to or by the committee under the Act. Thus, it appears that the committee is not a "political committee" as defined in the Act and is not required to register with the Commission and file reports of its activities. This conclusion is conditioned on the committee's continued avoidance of any activity which could be construed as election advocacy, including the donation of services or computer data to a candidate for Federal office or to a "political committee." Such activity may subject the committee to the registration, reporting, and other requirements of the Act and Commission regulations.

Based on the discussion of your initial question and the Commission's conclusion that the committee is not a "political committee" and is not required to register and report, it follows that contributors to the committee are not subject to the contribution limitations and reporting requirements of the Act.

With regard to your final question regarding the permissibility of the committee's acceptance of corporate contributions, the Commission concludes that the Act would not prohibit the committee from accepting corporate contributions.

Section 441b prohibits corporations from making contributions or expenditures in connection with any election to any Federal office. The Commission views the mandatory reapportionment process, necessary for the maintenance of districts whose size and composition comports with the Constitution of the United States, as separate and distinct from the election

¹ See also U.S. Const. Amend. XIV, §2.

process by which individuals are selected for office. Moreover, the legislative history of that section of the Act indicates that the broad prohibition against corporate involvement in the election process was not intended to cover lobbying activity.² See Advisory Opinion 1978-52 and compare Advisory Opinion 1979-64, copies enclosed. Since the Congressional reapportionment process in California has not been concluded, the committee's activities, as described, may be viewed as similar to, if not actual, lobbying of the California State legislature. In addition, the Commission is of the opinion that the committee's possible participation in any lawsuit with respect to a Congressional reapportionment plan would not be in connection with a Federal election. Thus, as to both lobbying and litigation, the prohibitions of 2 U.S.C. 441b would not apply to corporations making donations to the committee.³

It should be noted, however, that no funds donated to the committee by corporations (or from any other prohibited source) may be transferred to a political committee account or otherwise used in connection with a Federal election. See 11 CFR 113.4 for analogous treatment of corporate contributions to office accounts of Federal officeholders.

The Commission expresses no opinion regarding application of any State law to the issues discussed herein.

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,

(signed)

John Warren McGarry
Chairman for thee
Federal Election Commission

Enclosures (Advisory Opinion 1980-57, 1979-64 and 1978-52)

² 117 Cong. Rec. 43380 (1971), (remarks of Rep. Hansen).

³ This same conclusion would apply with respect to donations from national banks, labor organizations, government contractors, and foreign nationals. See 2 U.S.C. 441b, 441c, and 441e.