



FEDERAL ELECTION COMMISSION
Washington, DC 20463

CONCURRING OPINION IN ADVISORY OPINION 1981-50

of

COMMISSIONER FRANK P. REICHE

While I agree with the basic conclusion of the Federal Election Commission in Advisory Opinion 1981-50, I believe that this area of the law remains confused and should be the subject of additional study and perhaps rule-making by the Commission. Specifically, I am concerned that the Commission's interpretation of the law fosters an ambiguity concerning political contributions made by or through a partnership. Although partnership checks were used in this instance, thus distinguishing this Opinion from Advisory Opinion 1980-72, is it fair to characterize a transaction as a partnership contribution when our regulations require the attribution to individual partners? Indeed, do you ever have a true partnership contribution unless the members of the partnership consciously decide to make a combined political contribution from partnership funds? Even though past Commission Advisory Opinions and the Commission's regulations may lead to the conclusion contained in this Opinion, I question whether it is accurate to characterize as a partnership contribution that which must, by law, be attributed to individual partners. Furthermore, this Advisory Opinion has the effect of limiting to a total of \$1,000 the amounts which may be contributed to individual candidates by all members of a partnership as a result of partnership checks. Does it matter whether a partnership check is used as long as the partnership does not participate in the process except to the extent of providing bookkeeping or administrative services, and as long as any political contributions made by means of a partnership check are allocated in writing to individual members of the partnership? After all, these individual partners would still be subject to the \$1,000 contribution limitation.

There is one other aspect of this Advisory Opinion which concerns me. This relates to the services provided by the partnership to facilitate the making of political contributions subsequently attributed to individual partners. In Advisory Opinion 1980-72 where only bookkeeping services were provided by the partnership, the commission held that the partnership did not thereby become a political committee which had to register and report under the Act even though the total cost of such services might exceed \$1,000. In this instance, however, not only were bookkeeping services made available to the individual partners, and not only were partnership checks instead of individual partners' checks used to make the contributions, but also there was a committee of

partners whose function it was to review solicitations for political contributions and then to suggest by way of guidelines the total amounts which might be appropriate for individual partners to contribute to political entities during any given year, these guidelines to be distributed to those partners who had indicated a willingness to participate in this program. One of the questions which was not properly addressed by this Advisory Opinion was whether the use of partnership time for this purpose, the review of political solicitations and the dissemination of proposed guidelines to the partners involved might involve the partnership to a point where it would be deemed a political committee if it spent more than \$1,000 for this purpose, thus triggering the registration and reporting requirements of the Act. Although I agree with the Commission's decision that this particular partnership did not become a political committee under the facts stated herein, I would suggest that the extent of its activity in this regard comes perilously close to a point where the partnership itself might be characterized a political committee.