



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 9, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-14

Philip Van Dam
Michigan Republican State Committee
414 Townsend Street
P.O. Drawer 632
Midland, Michigan 48640

Dear Mr. Van Dam:

This responds to your letter of March 2, 1982, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the establishment of an account devoted to reapportionment-related activities in Michigan.

Your letter states that the Michigan Republican State Committee ("the Committee") has traditionally attempted to influence the decisions of the Michigan State Legislature as regards the Congressional reapportionment activities of the State Legislature. The Committee has generally engaged the services of computer programmers and computer time to gather demographic information regarding the state. This information is analyzed and computer programs developed. The computer programs have then been used to develop Congressional reapportionment plans and maps which are made available to the appropriate State Legislative committee or committees for the purpose of influencing legislative activity regarding the reapportionment process. You add that occasionally, the Committee has instituted legal challenges to Congressional reapportionment plans developed by the State legislature.

You note that this year, as a result of the recent decennial census, the State Legislature is again presently in the Congressional reapportionment process. Accordingly, the Committee finds itself involved in attempting to influence the State Legislature as regards legislative activity connected with the process. Such activity by the Committee brings with it attendant costs for computer services, population studies and evaluations, map drawing, plan presentation, and legal services. In light of the fact that the Committee does otherwise engage in the type of election influencing activity that is normally subject to the Act, you ask whether the Committee may establish a

separate segregated account to receive and disburse funds for the purpose of influencing the Congressional reapportionment activities of the State Legislature.

Under the Act, the term "contribution" includes "any gift, subscription, loan, advance, or deposit of money, or anything of value made by any person for the purpose of influencing any election to Federal office...." 2 U.S.C. 431(8). 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. Advisory Opinion 1981-35. Similarly, the Committee's financing of litigation which relates to reapportionment decisions made by the Michigan legislature would not be viewed as election influencing under the Act and Commission regulations. See Advisory Opinion 1981-35, and compare Advisory Opinion 1980-57, copies enclosed. Accordingly, based upon your representations that the Committee intends to use the funds accumulated in the separate account solely to finance reapportionment-related activity, the Commission concludes that receipts and disbursements from the reapportionment account would not constitute contributions or expenditures under the Act. This conclusion is conditioned on the Committee's not using any of the funds contained in the reapportionment account to finance any election advocacy, including the donation of services or computer data purchased with funds from the reapportionment account, to a candidate for Federal office or to a political committee. See 2 U.S.C. 431(4).

Based on the foregoing discussion and the Commission's conclusion that the funds received and disbursed from the reapportionment account are not contributions or expenditures (and thus not subject to the Act's disclosure requirements), it follows that such funds are not subject to the contribution limitations and prohibitions of the Act. Accordingly, the Commission concludes that nothing in the Act or Commission regulations would prohibit the receipt of corporate contributions to the reapportionment account. In this regard the Commission notes that 2 U.S.C. 441b prohibits corporations from making contributions or expenditures in connection with any election to any Federal office. The legislative history of that section of the Act indicates, however, that the broad prohibition against corporate involvement in the election process was not intended to cover lobbying activity.¹ See Advisory Opinion 1981-35, citing Advisory Opinion 1978-52. The Commission has previously recognized that the Congressional reapportionment process may be viewed as similar to, if not actual, lobbying of the state legislature. See Advisory Opinion 1981-35. Thus, the prohibitions of 2 U.S.C. 441b would not apply to corporations making donations to the Committee's reapportionment account. It should be noted however that none of the funds donated to the reapportionment account (including donations by corporations or any other prohibited source) may be transferred to a Committee account which is used in connection with a Federal election. See 11 CFR 113.4 for an 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 described herein.

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

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)

Frank P. Reiche
Chairman for the Federal Election Commission

Enclosures (AOs 1981-35, 1980-57 and 1978-52)