



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 5, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-22

H. D. Pedlar, Jr.
Treasurer, Steve Bartlett for Congress Committee
P.O. Box 50411
Dallas, Texas 75250

Dear Mr. Pedlar:

This responds to your letter dated March 12, 1982, requesting an advisory opinion on behalf of the Steve Bartlett for Congress Committee concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") to Mr. Bartlett's change in candidacy for nomination and election from one Congressional District to another pursuant to a court ordered redistricting plan. Your request sets forth the following facts:

On August 13, 1981, Steve Bartlett executed his Statement of Candidacy for election in November, 1982, to the United States House of Representatives for the 5th Congressional District in Texas. Thereafter, the then treasurer of the Steve Bartlett for Congress Committee executed a Statement of Organization for the formation of Mr. Bartlett's principal campaign committee. Subsequently, the Committee solicited and received numerous contributions in support of Mr. Bartlett's candidacy and campaign for election from the 5th Congressional District in Texas. You state that the Committee expended funds received as contributions for various campaign purposes, all of which were directly related to persuading eligible voters living in the 5th Congressional District to vote for Steve Bartlett and thereby elect him in the primary election to be held in May, 1982, as the Republican nominee and in the general election to be held in November, 1982, as the 5th Congressional District's Representative to the United States House of Representatives.

On February 27, 1982, a United States District Court ordered a change in the geographical boundary lines encompassing the 5th Congressional District in Texas.¹ On March 12, 1982, Steve Bartlett withdrew his candidacy for election from the 5th Congressional District in Texas and declared his candidacy for election to the United States House of Representatives for the 3rd Congressional District in Texas.² The specific question presented in your request is whether, for purposes of the limitations on contributions and expenditures contained at Section 315 of the Act (2 U.S.C. 441a), Mr. Bartlett's candidacy for Federal office from the 3rd Congressional District in Texas constitutes a separate and different election than that for which he was a candidate for Federal office from the 5th Congressional District in Texas.³

The Act limits the making of "contributions" to any candidate and his authorized committees "with respect to any election for Federal office". 2 U.S.C. 441a(a)(1)-(2). Both the Act and Commission regulations specifically recognize that a single individual may be a candidate for election to more than one Federal office. Under such circumstances, separate contribution limitations apply to each separate campaign for Federal office except to the extent that funds are transferred from one principal campaign committee to another. See 2 U.S.C. 441a(a)(5)(C); 11 CFR 110.1(f), 110.3(a)(2)(v). In order to come under these latter provisions, however, an individual must seek election, or nomination for election, to two different Federal offices. The question presented by your request is, therefore, whether two Congressional seats from the same State in the same election cycle constitute separate and different Federal offices for purposes of the Act's contribution limitations.

¹ See Seamon v. Upham, et al., Civ. Action No. P-81-49-CA (E.D. Tex. Feb. 27, 1982), wherein various parties contested the reapportionment plan enacted by the Texas legislature in August, 1981. Pursuant to an objection interposed by the Attorney General of the United States under the Voting Rights Act, which rendered the Texas reapportionment plan unenforceable, the district court fashioned a new reapportionment plan that altered the boundaries of Districts 3, 5, 15, 24, 26 and 27. The remaining 21 Congressional districts remain as they were defined in the plan enacted by the Texas legislature.

² Other Republican candidates in these two districts have also changed from one race to the other. Information provided to the Commission and to the Texas Secretary of State by the Texas Republican Party Headquarters indicates that as of February 10, 1982, the candidates for the Republican nomination in the 3rd Congressional District were Dede Casad, Kay Bailey Hutchison, Jim Jackson, Joe Devany and Mark Malone. Since that time, Mr. Malone withdrew from the race and Mr. Devany decided instead to seek the Republican nomination from the 5th Congressional District. In turn, Dee Travis, like Mr. Bartlett, transferred from the 5th to the 3rd Congressional District.

³ The Commission notes that Mr. Bartlett is presently a candidate for the Republican nomination to United States Representative in the primary election set for May 1, 1982. To the extent that you request an advisory opinion regarding the limitations on party expenditures contained at 2 U.S.C. 441a(d)(3), such a request presents a hypothetical situation not qualified for treatment as an advisory opinion request since such expenditures may be made only in connection with a candidate's general election campaign. See 11 CFR 112.1(b). Accordingly, the only question properly before the Commission at this time is that of the application of the contribution limitations contained at 2 U.S.C. 441a(a).

The term "Federal office" is defined as "the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress." See 2 U.S.C. 431(3); 11 CFR 100.4. Thus, neither the Act nor the Commission's regulations identify Congressional seats as separate Federal offices.⁴ Moreover, those portions of the Constitution of the United States and Federal law which provide for the election of United States Representatives indicate that each Congressional seat within a State does not constitute a separate Federal office. The Fourteenth Amendment to the Constitution directs that Representatives be apportioned among the States according to their population. Since 1842, Federal statutes have provided that where a State was entitled to more than one Representative, the election should be by district. See 2 U.S.C. 2a, 2b, 2c. However, as the Supreme Court observed, "It has never been doubted that representatives in Congress thus chosen [by district] represented the entire people of the State acting in their sovereign capacity." McPherson v. Blacker, 146 U.S. 1, 26 (1892). Thus, the office of Representative of the United States is defined not by the geographical boundaries of the particular district which elects it but rather by the State which it represents.⁵

Accordingly, the Commission concludes that, for purposes of computing the limitations on contributions under 2 U.S.C. 441a(a), Mr. Bartlett's candidacy for nomination to election from the 3rd Congressional District in Texas is not a separate campaign for election to Federal office from his candidacy for nomination to election from the 5th Congressional District in Texas. Mr. Bartlett need not establish a separate principal campaign committee for his campaign in the 3rd Congressional District (see 11 CFR 110.8(d)(11))⁶ and may accept contributions from previous contributors only to the extent that the aggregate of such contributions does not exceed the limitations at 2 U.S.C. 441a(a)(1)-(2).

⁴ The legislative history and the Explanation and Justification of the Commission's regulations do not reflect that any consideration was given to this question. See 122 Cong. Rec. H3777 (daily ed. May 3, 1976) (remarks of Rep. Hays); H. Conf. Rept. No. 94-1057, 94th Cong., 2d Sess. at 58; see also Explanation and Justification for Part 110 of Regulations, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶864 at 1560-62. Rather, it appears that in drafting 2 U.S.C. 441a(a)(5)(C), the conferees were primarily concerned with allowing the intercommittee transfer of funds by an individual who is running as a candidate for President and in the same year runs as a candidate for the House or the Senate. See House - Senate Conferees, Conference Report to Accompany S.3065, Federal Election Campaign Act of 1976 (April 13, 1976) at 238-39 (remarks of Chairman Cannon).

⁵ Compare Advisory Opinion 1978-19, in which the Commission concluded that two Senate seats from the same State were different offices. Pursuant to the Constitution of the United States, art. I, §3, cl. 2, all Senate seats are divided into three classes of staggered six year terms. The two Senate seats at issue in Advisory Opinion 1978-19 spanned different terms and were, therefore, from different classes.

⁶ The Statement of Organization filed by his authorized committee(s) must, however, be amended to reflect the redesignation of Congressional district. See 11 CFR 102.2; Advisory Opinion 1980-30, copy enclosed.

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)

Frank P. Reiche
Chairman for the Federal Election Commission

Enclosures (AOs 1980-30 and 1978-19)