



FEDERAL ELECTION COMMISSION
Washington, DC 20463

DISSENTING OPINION IN ADVISORY OPINION 1982-40

of

COMMISSIONER THOMAS E. HARRIS

While I agree with most of Advisory Opinion 1982-40, I cannot go along with that part of the opinion that permits APEP to use the funds that it collected to support state candidates for federal political activities.

The Commission's regulation at 11 CFR 114.5(a)(2) requires that if guidelines for contributions are suggested in a solicitation, the solicitation must note that more or less than the suggested amount may be contributed. The funds that APEP has on hand were raised by a solicitation that asked for a "donation of \$1.00 or more," and thus did not comply with 11 CFR 114.5(a)(2).

I agree that the suggested contribution amount in this case is minimal. Moreover, I am in favor of revising our regulations to permit that a minimum contribution be requested in order that a political committee may cover at least those costs associated with handling a small contribution. Nonetheless, until the regulation is changed, the Commission is bound by its own substantive regulations, 1/ which, in the case of 114.5(a)(2), have been held to apply to other similarly situated committees. 2/

Were this issue to arise in the context of an enforcement action, I could go along with a decision to waive the regulation as an exercise of prosecutorial discretion. But where, as here, the decision is in the context of an advisory opinion, and is thus a sanctioning of prospective activity, the disregard of an unrepealed substantive regulation is not in order.

Moreover, I am concerned that in thus sanctioning a violation of its regulation the Commission has embarrassed future enforcement of the regulation; and there are undoubtedly situations where enforcement is salutary.

1/ U.S. v. Nixon, 418 U.S. 683, 694-696 (1974); Bradley v. Weinberg, 483 F2d 410, 414 no.2 (1st Cir., 1973); Vitarelli v. Seaton, 359 U.S. 535 (1959).

2/ See Advisory Opinion 1979-60 and closed Matter Under Review 773.