



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 20, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-47

Joseph Sussillo
Treasurer, Sullivan for Senate
437 Bay Ridge Parkway
Brooklyn, New York 11209

Dear Mr. Sussillo:

This responds to your letter of July 15, 1982, requesting an advisory opinion on behalf of Sullivan for Senate ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to Florence M. Sullivan's status as a candidate for nomination by three different political parties to the Office of United States Senator from New York State in the primary election to be held on September 23, 1982.

In your request, you state that Florence M. Sullivan is an enrolled member of the New York State Republican Party. At the State Convention held on June 17, 1982, Mrs. Sullivan received a sufficient number of votes to demand that her name appear on the Republican primary ballot pursuant to §6-104 of the New York Election Law. The necessary demand was thereafter duly filed at which time Mrs. Sullivan qualified as a candidate for the Republican nomination to the Office of United States Senator in the primary election to be held on September 23, 1982. You state that Mrs. Sullivan has also received the designations of the Conservative Party of New York State and the Right-to-Life Party of New York State at their respective State Committee meetings, both of which were held on June 19, 1982. The necessary papers were duly filed thereby qualifying Mrs. Sullivan as a candidate for nomination by the Conservative and Right-to-Life parties to the office of United States Senator in the primary election set for September 23, 1982.

You further explain that pursuant to provisions of the New York Election Law, designations for nomination as United States Senator by the five political parties which presently exist under the laws of New York State (each party having received at least 50,000 votes in the most recent gubernatorial election) are made by the state committees of those parties. Any person not designated may qualify as a candidate for nomination by obtaining sufficient signatures on petitions and obtaining any necessary authorization from the political party to enter its primary.

However, under §6-120 of the New York Election Law, only candidates enrolled in a party may be designated or nominated by that party without the specific authorization of the party. Pursuant to New York law, only voters enrolled as members of those parties may vote in that party's primary.

At this time, there are two other candidates for the Republican nomination for United States Senator who were designated at the Republican State Committee meeting. Other candidates may qualify for the Republican Party nomination by circulating petitions. Similarly, additional candidates may qualify for ballot positions for the Conservative and Right-to-Life Party nominations. The petition period in New York is now scheduled to run from July 20, 1982 to August 10, 1982, and it is therefore not possible to determine at this time who will finally qualify for ballot position in any of the three primaries for which Mrs. Sullivan has qualified. The specific question presented in your request is whether, under the foregoing circumstances, the Committee may accept from a contributor the maximum contribution permitted by 2 U.S.C. 441a for each of the party primaries to be held on September 23, 1982 or whether all such primaries will be considered one election for purposes of the Act's contribution limitations.

At the outset, the Commission notes that under §6-160(1) of the New York Election Law, the nomination of a party is made by the primary election at which other candidates for public office are nominated only if more than one candidate is designated for nomination for each office to be filled. As you note in your request, candidates for United States Senate may be designated for nomination either by the party's state committee or by petitions signed by enrolled members of the party. All persons designated for uncontested offices are deemed nominated thereto without balloting. See §6-160(2) of the New York Election Law. Thus, because Mrs. Sullivan is at this time the only candidate designated for nomination by the Conservative and Right-to-Life parties, the threshold question is presented as to whether she is a candidate for nomination by either of these parties in the September 23 primary election in light of the fact that no balloting may occur with respect to her nomination by either party. Commission regulations provide that if no primary election is held because a candidate is unopposed, the date on which the primary would have been held shall be deemed to be the date of the primary for purposes of the Act's contribution limitations. See 11 CFR 110.1(j)(3). Thus, under the Act Mrs. Sullivan would be deemed to be a candidate for nomination by the Republican, Conservative and Right-to-Life parties in the September 23 primary election even though no balloting may take place to select the nominees of the latter two parties.

Responding, then, to the specific question posed in your request, the Commission concludes that the selection of the nominees of the Republican, Conservative and Right-to-Life parties in the September 23, 1982 primary election would be considered one election for purposes of the Act's contribution limitations. 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). Commission regulations provide that a single limitation applies to contributions to a candidate unless he is a candidate in more than one election, or seeks election (or nomination for election) to more than one Federal office. See 11 CFR 110.1(f), 110.1(j)(1). It is clear, however, that Mrs. Sullivan is not a candidate in more than one election. The term "election" is defined to mean "a general, special, primary or runoff election". See 2 U.S.C. 431(1)(A). In turn, "primary election" is defined to include an election "held prior to a general election, as a direct result of which

candidates are nominated, in accordance with applicable State law, for election to Federal office in a subsequent election...." See 11 CFR 100.2(c)(1). Accordingly, the nominations made by the Republican, Conservative and Right-to-Life parties on September 23, 1982 will constitute the same primary election. Moreover, because Mrs. Sullivan is a candidate for nomination by all three parties to the same office of United States Senator from New York State, she cannot be regarded as seeking more than one Federal office. See 2 U.S.C. 431(3); 11 CFR 100.4; see also Advisory Opinions 1982-22, 1978-19, copies enclosed. A single contribution limitation as set forth at 2 U.S.C. 441a(a)(1)-(2) would, therefore, apply to contributions made to Mrs. Sullivan with respect to the primary election set for September 23, 1982.

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 1982-22, 1978-19)