



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 8, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-49

Charles A. Muessel, Treasurer
Weicker '82 Committee
P.O. Box 1982
Greenwich, Connecticut 06836

Dear Mr. Muessel:

This responds to your letter of August 4, 1982, as supplemented by your letter of August 25, 1982, requesting an advisory opinion on behalf of the Weicker '82 Committee ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use by the Committee of funds raised in anticipation of a possible run-off election.

Your August 4 letter states that because of the "controversial nature" of the pre-primary race between Senator Lowell Weicker and his opponent, Prescott Bush, the Committee had reason to believe that Mr. Bush would elect to have a "run-off" election.¹ You add that Mr. Bush announced his intention to have a primary election on numerous occasions, including a public announcement on the floor of the state Republican convention. In reliance on the foregoing statements by Mr. Bush and newspaper reports of his intention to have a primary election, the

¹ Connecticut law states that a person who is a member of a political party, who has received at least 20% of the vote on any roll call vote at the state party convention for nomination to a state-wide office, and who files petitions signed by the requisite number of electors who are members of the political party, may run in the primary election against the candidate endorsed by the state party convention. See., Conn. Gen. Stat. §9-400. If no candidacy for nomination by a political party to an office has been filed by any other person, other than the party endorsed candidate, no primary is to be held for such party for such office and the party endorsed candidate for such office shall be deemed to have been lawfully chosen as the nominee of such party for such office. Conn. Gen. Stat. §9-416. Your letter uses the term "run-off" to describe the September 7, 1982 election, and it is true that that election has many characteristics of a run-off election. However, the Commission notes that Connecticut law regards that election as a primary election. See, Advisory Opinion 1976-58, copy enclosed. For purposes of this opinion, the Commission will refer to the September 7 election as a primary election.

Committee contracted to pay \$65,000² to Winning Ways, Ltd. of Pearl River, New York, for the purpose of telephoning independent voters in Connecticut on behalf of Senator Weicker to advocate their registration as Republicans for the primary election. In addition to entering into the contract with Winning Ways, Ltd., the Committee also established a separate, interest-bearing account to receive contributions from individuals for use in the event a primary election were to occur.³ You state that presently the primary election account has received a total of \$9,600 in campaign contributions specifically designated for use in a primary election. You add that these contributions were made by individuals who have reached the legal limit for individual contributions to the nominating convention⁴ and general election.

Your letter of August 25, 1982, explains that a total of \$35,250 was paid from the convention account to Winning Ways, Ltd. prior to the state party's nominating convention held on July 24, 1982. The Committee also paid winning Ways, Ltd. \$5,560 for actual services rendered on July 26 and 27, after the convention and prior to Prescott Bush's formal announcement on July 27, 1982 of his decision to withdraw from the Senate race. Under these circumstances, you ask whether the \$9,600 which was contributed toward the primary election may be used by the Committee to defray expenses incurred by the Committee with Winning Ways, Ltd., specifically in anticipation of a primary election.

Under the Act, individuals are prohibited from making a contribution to a candidate for Federal office in excess of \$1,000 with respect to any election. 2 U.S.C. 441a(a)(1)(A). The term "election" is defined in 2 U.S.C. 431(1) to mean a general, special, primary, or run-off election. Moreover, because the Connecticut Republican Party Convention has the authority under relevant State law to nominate a candidate, the Commission has held that such a convention is an "election" for purposes of the Act's contribution limits. Advisory Opinion 1976-58; see 2 U.S.C. 431(1)(B) and 11 CFR 100.2(e).

The Commission recognizes that accepting contributions for an election at a time before the necessity of such an election is determined is analogous to accepting general election contributions before the primary election. Advisory Opinion 1980-68. The acceptance of general election contributions before the primary election is specifically permitted in Commission regulations. See, 11 CFR 102.9(e). Thus, the Commission has approved the acceptance of run-off election contributions before there is an established necessity for such an election provided that such run-off election contributions are separately accounted for and are returned to the donors in the event that no run-off election is held. Advisory Opinion 1980-68; see also Advisory Opinion 1980-122, copies enclosed.

In the situation presented here there was only one "election" held for purposes of the Act's contribution limits (i.e. the convention) since Mr. Bush did not file petitions, and under Connecticut law there is no primary election held unless a candidate satisfies that requirement.

² Your letter of August 25 indicates that no further amounts are due under the terms of this contract.

³ Had such a primary election been held, it would have occurred on September 7, 1982.

⁴ See discussion in footnote 1.

See, Conn. Gen. Stat. §9-416. Since there was not a determination under state law to hold a primary election, there can be no separate contribution limit with respect to that election. Therefore, it is the opinion of the Commission that the Committee may not lawfully under the Act use the contributions collected in anticipation of the primary election to defray expenses incurred by the Committee. To the extent that contributors to the Committee's primary election account have exhausted their contribution limits with respect to the convention and the general election, contributions from those individuals must be returned to them. See, Advisory Opinions 1980-68, and 1980-122.

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 1976-58, 1980-68 and 1980-122)