FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 31, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1983-20

J. Curtis Herge, Esquire
Sedam and Herge
8300 Greensboro Drive
McLean, Virginia 22102

Dear Mr. Herge:

This responds to your letter of July 6, 1983, requesting an advisory opinion concerning application of 26 U.S.C. 9012(f) to your client, the National Conservative Political Action Committee ("NCPAC"), a multicandidate political committee.

Your request states that NCPAC proposes to make expenditures in 1984 in excess of $1,000 expressly advocating the defeat of the candidate nominated by the Democratic Party for election to the Office of President. You ask that the Commission assume that the proposed expenditures will be made at a time in 1984 after the Democratic Party's nominee for President has met all applicable conditions for eligibility to receive payments under the Presidential Election Campaign Fund Act ("Fund Act").[1] You note that NCPAC will not, at any time, be an authorized committee of any candidate for election to the Office of President. NCPAC asks the Commission to assume that the proposed expenditures would constitute "independent expenditures" as defined in 2 U.S.C. 431(17) and Commission regulations at 11 C.F.R. 109.1. Finally, you note that all of the proposed expenditures will be used solely for communications expressly advocating the defeat of the Democratic Party's nominee for President, and that none will be used to advocate the election of any other candidate or candidates for the Office of President.

[1] The Commission notes preliminarily that this assumption has no relevance to the application of 26 U.S.C. 9012(f)(1) in the situation you have proposed. By its terms 9012(f)(1) applies to a particular expenditure on the basis of the Fund Act eligibility of a candidate whose election is furthered by that expenditure. Accordingly, it makes no difference whether the Democratic nominee whose election defeat NCPAC advocates via its expenditure has, or has not, become eligible under the Fund Act. See discussion below.

The specific issue raised by your request is whether NCPAC's proposed expenditures, under the circumstances and assumptions set forth, are limited by 26 U.S.C. 9012(f)(1) to an aggregate amount not exceeding $1,000. The Commission concludes that the proposed expenditures are so limited by 26 U.S.C. 9012(f)(1).

The statutory provision at issue here states, in pertinent part:

> it shall be unlawful for any political committee which is not an authorized committee with respect to the eligible candidates of a political party for President and Vice President in a presidential election knowingly and willfully to incur expenditures to further the election of such candidates, which would constitute qualified campaign expenses if incurred by an authorized committee of such candidates, in an aggregate amount exceeding $1,000.

This provision limits to $1,000 expenditures that further the election of an "eligible candidate" under the Fund Act, assuming the expenditure is of the kind that would constitute a "qualified campaign expense" if made by an authorized committee of such a candidate. See, Federal Election Commission v. Americans for Change, 512 F. Supp. 489 (D.D.C. 1980) (three-judge court), aff'd by an equally divided Court, 455 U.S 129 (1982).

The terms "eligible candidate" and "qualified campaign expense" delineate the applicability of 9012(f)(1) in several respects. As defined in 26 U.S.C. 9002(4), an "eligible candidate" means the candidate of a political party for President (or Vice President) who has met all applicable conditions for eligibility to receive payments under the Fund Act. These conditions are specified in 26 U.S.C. 9003. With respect to a candidate nominated by a major political party, one of the significant eligibility conditions in 9003 is the occurrence of that candidate's nomination. See 26 U.S.C. 9003(b) and 9002(2)(A). The term "qualified campaign expense" is also used in 9012(f)(1), thereby indicating that to be the equivalent of a "qualified campaign expense" incurred by the authorized committee of an eligible presidential candidate, a 9012(f)(1) expenditure must be incurred within the expenditure report period.[2] It may, however, be made before that period if incurred for property, services, or facilities to be used during such period. 26 U.S.C. 9002(11)(B); see generally 26 U.S.C. 9002(11), which sets forth other requirements of a qualified campaign expense. Accordingly, the question of whether NCPAC's proposed expenditures are subject to the 9012(f) limit would be determined with reference to the above cited provisions of the Fund Act.

The Commission concludes that the expenditures NCPAC proposes to make necessarily would further the election of any opponent of the Democratic nominee. Thus, if, as stated above, these expenditures would constitute qualified campaign expenses if incurred by an authorized committee of an opponent of the Democratic nominee who becomes eligible under 26 U.S.C.

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[2] The expenditure report period for a major party candidate begins on the date of the candidate's nomination by a major party if that date is before September 1 of the presidential election year. The period ends 30 days after the November general election. See 26 U.S.C. 9002(12)(A).

9002(4) and 9003, they would be limited to $1,000 by 26 U.S.C. 9012(f). See Advisory Opinions 1983-10 and 1983-11 (copies 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 U.S.C. 437f.

Sincerely yours,

(signed)

Danny L. McDonald
Chairman for the Federal Election Commission

Enclosures (AOs 1983-10 and 1983-11)