



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 18, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1983-37

Mr. James Roosevelt, Jr.
Herrick & Smith
100 Federal Street
Boston, Massachusetts 02110

Dear Mr. Roosevelt:

This responds to your letter of October 12, 1983, requesting an advisory opinion on behalf of the Massachusetts Democratic State Committee ("the Party") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the establishment of a special legal expense fund.

You explain that the special legal expense fund will be used only "to defray legal costs of defending legal actions brought by candidates against the Party." According to your letter, one specific pending case is the same litigation discussed in Advisory Opinion 1982-35. In that opinion, the Commission considered a legal expense fund that was established to defray the costs of litigation challenging the constitutionality of a Party rule which required a Party convention endorsement before a candidate for the United States Senate could participate in a primary election for that office.

You state that the Party's proposed legal expense fund will be "maintained apart from" any other Party funds and that no funds will be expended "to initiate legal action to remove an identified candidate from the ballot." You ask that the Commission grant the legal expense fund of the Massachusetts Democratic State Committee the same status as that granted to the legal expense fund in Advisory Opinion 1982-35.

The Commission agrees that the situation described in your request is similar to the situation presented in Advisory Opinion 1982-35. Thus, the Commission concludes that to the extent monies in the fund will be used only for the purposes described, and will be maintained separately from funds used for Federal elections, the Party's legal expense fund would not be

subject to the Act's limitations, prohibitions, or disclosure requirements. This result also follows from a more recent opinion wherein the Commission concluded that, to the extent a special legal expense fund was used exclusively for the purpose of defraying legal costs and expenses resulting from litigation to challenge an Arizona constitutional provision, donations to and disbursements from the fund would not constitute contributions or expenditures under the Act. See Advisory Opinion 1983-30, copy enclosed.

The Commission expresses no opinion regarding any other Federal or state statute, nor regarding any Federal or other tax ramifications, since those issues are not within its jurisdiction.

This response constitutes an advisory opinion concerning the 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)

Lee Ann Elliott
Vice Chairman for the Federal Election
Commission

Enclosures (AO's 1983-30 and 1982-35)