



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 13, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-54

William C. McNeal, Treasurer
Friends of Bob Livingston
P.O. Box 1565
Gretna, LA 70053

Dear Mr. McNeal:

This responds to your letter of October 1, 1984, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the reporting requirements for Friends of Bob Livingston, the principal campaign committee of Representative Bob Livingston who has sought re-election from the First Congressional District of Louisiana.

You state that Louisiana election law is unique among the fifty states in that it provides for a primary election in which every candidate who qualifies for Congress, irrespective of party, is on the same ballot. If any candidate receives a majority of the votes cast in the primary, he or she is elected to Congress. You state that in this year's primary, held on September 29, 1984, you and five other members of Congress were elected by receiving a majority of votes cast in your respective contests. The other three members of Congress from Louisiana who sought election this year were unopposed in the primary election and did not have their names on the ballot. Nevertheless, they were also elected. You add that under Louisiana law the Secretary of State now certifies the results and delivers the certificates of election to the Governor for signature. These certificates are then sent to either the President of the U.S. Senate or the Clerk of the House of Representatives, as appropriate. You further state that in Louisiana "the election process is over" and "no more Congressional elections [are] taking place in Louisiana this year."

You ask whether the Livingston committee must file pre-election and post-general election reports 12 days before and 30 days after November 6, since, as you assert, "there is no election for Congress on November 6 in Louisiana."

The Act provides that the treasurer of the principal campaign committee of a candidate for the House of Representatives shall file a pre-election report no later than the 12th day

"before...any election in which such candidate is seeking election, or nomination for election" and a post-general election report "no later than the 30th day after any general election in which such candidate has sought election." 2 U.S.C. 434(a)(2)(A). Commission regulations also require the filing of a pre-election report with respect to any primary or general election in which the candidate "seeks election" and a post-general election report after "any general election in which the candidate seeks election." 11 CFR 104.5(a)(1). Commission regulations also define a general election as "an election held in even numbered years on the Tuesday following the first Monday in November." 11 CFR 100.2(b)(1).

Louisiana statutes set the primary election for congressional candidates for the first Saturday in October¹ and the general election for such candidates as the Tuesday after the first Monday in November. 18 La. Rev. Stat. Ann. §402 and §1272 (West 1979). Voters may vote in primary and general elections without regard to their party affiliation or the lack of it, and candidates may be voted on without regard to their party affiliation or the lack of it. 18 La. Rev. Stat. Ann. §401. A candidate qualifies for a primary election by filing a timely notice of candidacy with a nominating petition or the qualifying fee. 18 La. Rev. Stat. Ann. §461. If a candidate is unopposed in a primary election, his or her name does not appear on the ballot. Such unopposed candidates and any candidate who receives a majority of the votes cast in the primary election are declared elected to the office each has sought. 18 La. Rev. Stat. Ann. §511. The Louisiana Secretary of State issues the certificate of election for a congressional candidate "immediately after the results of the election...become official." 18 La. Rev. Stat. Ann. §1277.²

Only if no candidate receives a majority of votes cast in a contested primary election is a general election for such office held. In such a case, the two candidates with the highest number of votes in the primary qualify for the general election. 18 La. Rev. Stat. Ann. §481 and §482. The one who receives the most votes in the general election is declared elected. 18 La. Rev. Stat. Ann. §512. The statute contemplates the possibility of an unopposed candidate in the general election only where two candidates qualify for the general election (because neither received a majority of votes in the primary) but then one dies or withdraws. Id.

Accordingly, under the Louisiana electoral process, where a candidate is unopposed in the primary election or receives a majority of votes cast in that election, the primary election results in the final selection of a single individual to the office at stake. The electoral contest for that office is over. As you state, no election for that office is then held in Louisiana in

¹ This year's primary was held on September 29 because of the occurrence of religious holidays.

² According to the Louisiana secretary of state, all candidates will be certified within 30 days after November 6, although some of them may have been elected on September 29, in order that all candidates (Federal, state, and local) are certified at the same time and not on a piecemeal basis.

November.³ The Commission must, however, consider the language and the operation of Louisiana law under the requirements of Federal law.

The U.S. Constitution explicitly gave Congress the power to set the time for election of Senators and Representatives:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such Regulations, except as to the Places of chusing Senators.

U.S. Const. art. I, §4, cl.1. Congress has so chosen to exercise this power and has set the time for the election of Senators and Representatives:

The Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January next thereafter. This section shall not apply to any State that has not yet changed its day of election, and whose constitution must be amended in order to effect a change in the day of the election of State officers in said State.

2 U.S.C. 7; see 2 U.S.C. 1. This provision, first enacted in 1872, was designed "to remedy more than one evil arising from the election of members of Congress occurring at different times in different states." Ex Parte Yarbrough, 110 U.S. 651, 661 (1884). Among the evils Congress sought to remedy by this provision were unduly benefiting certain states and political parties and unnecessarily burdening voters and politicians. See Busbee v. Smith, 549 F.Supp. 494, 524 (D. D.C. 1982), aff'd, 459 U.S. 1166 (1983).

The Commission does not challenge your conclusion that Louisiana law provides for and permits the election of members of Congress at a date other than that set forth in 2 U.S.C. 7. In the Commission's view §7 of Title 2 is paramount and controlling with respect to the question presented here.⁴ Congress has "established" the Tuesday after the first Monday in November in even-numbered years as the date of election for members of Congress. The Commission has,

³ References to the timing of certification in earlier advisory opinions are intended only as an indication of when a candidate is elected or when an election is held. The timing of certification is not, by itself, determinative since it is a ministerial act. The delay in certifying the Louisiana results until after November 6 is, as the Louisiana secretary of state points out, done for administrative convenience. See footnote 2. It does not alter the conclusion that Rep. Livingston has been elected and is not a candidate seeking election on November 6. Thus, the Louisiana process is distinguishable from states where an unopposed candidate whose name is not on the general election ballot is not deemed or declared elected until after the November election. See Advisory Opinion 1978-65.

⁴ The Commission takes no position on the validity of the Louisiana electoral process with regard to 2 U.S.C. 7, since that question is not within its jurisdiction. See 42 U.S.C. 1973c. The Commission also notes that it has found no other Federal law that in its view alters the requirement of 2 U.S.C. 7 in this circumstance. But see Busbee v. Smith, 549 F.Supp. at 523-26.

therefore, accepted that date as the date of the general election for members of Congress (without regard to the peculiarities of state law) for the purpose of interpreting and applying the Federal Election Campaign Act of 1971, as amended. See 11 CFR 100.2(b)(1).

Accordingly, the Commission concludes that the Friends of Bob Livingston committee must file a pre-election report, due on October 25, covering the period of October 1 to October 17; a post-general election report, due on December 6, covering the period of October 18 to November 26; and a year-end report, due on January 31, 1985, covering the period of November 27, to December 31, 1984.

The Commission's conclusion that pre-general election and post-general election reports are required with respect to the general election scheduled for November 6, 1984, also raises the issue of contribution limitations under 2 U.S.C. 441a. The contribution limitations are available for each separate 1984 election with respect to which Mr. Livingston is a candidate. 2 U.S.C. 441a(a)(6); 11 CFR 110.1. The analysis set forth above indicates that Mr. Livingston is deemed a congressional candidate with respect to a November 6, 1984, general election because such an election is prescribed by Federal statute, which the Commission must follow and apply. Accordingly, the Commission concludes that Mr. Livingston may accept otherwise lawful contributions with respect to the November 6, 1984, general election without regard to the fact that he did not participate in that election. 11 CFR 110.1(j)(2); see Advisory Opinion 1978-79. The situation presented here is distinguishable from that addressed in Advisory Opinion 1982-49 since the holding of a primary election in that case was not mandated by Federal statute. Because the primary election was not held, a separate contribution limitation was not available. In this case, however, Federal statute recognizes only one general election date whether or not a candidate has already been selected through a primary election that includes all candidates regardless of their political party affiliations.

Also, the Commission notes that you ask that your letter be treated as a request for rulemaking. The Commission will so consider your request.

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)

Lee Ann Elliott
Chairman for the
Federal Election Commission

Enclosures (AOs 1982-49 and 1978-79)