



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 17, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-11

Mr. Ronald T. Butler
Deputy Director
Mueller for Congress
11736 Portlew Drive
Newbury, Ohio 44065

Dear Mr. Butler:

This responds to your letter of March 20, 1986, as supplemented by your letter of March 25, 1986, requesting an advisory opinion on behalf of the Margaret Mueller for Congress Committee ("the Committee"),¹ the principal campaign committee of Margaret R. Mueller, a candidate in the 11th congressional district of Ohio, concerning preemption by the Federal Election Campaign Act of 1971, as amended ("the Act"), of a provision of Ohio law relating to political communications.

You state that your question arises with the Ohio Secretary of State's office. According to your request, under Ohio election law the Committee is required to include either the word "elect" or "for" in its campaign logo.² You state that either "Elect Margaret Mueller Congress" or "Margaret Mueller for Congress" would satisfy the Ohio requirement, but that the Committee wishes to use a logo that states simply "Margaret Mueller Congress." You ask whether the Act preempts application of Ohio law to the situation you describe.

¹ Although your letters refer to "Mueller for Congress," the Commission notes that according to a Statement of Organization and Statement of Candidacy filed on March 31, 1986, Margaret Mueller for Congress Committee is the principal campaign committee of Margaret R. Mueller. According to Commission records, the candidate has no other authorized committees.

² The Commission assumes from your request that you have determined, or been informed by the Ohio Secretary of State, that the Ohio statute in question is in fact applicable to your proposed use of the logo contained in your request.

Under §3599.091(B)(1) of the Ohio Revised Code, it is unlawful for any person, during the course of any campaign for nomination or election to public office, by means of campaign materials³ or otherwise, to "[u]se the title of an office not currently held by a candidate in a manner that implies that the candidate does currently hold that office...." To be covered by this provision, the candidate must use the title "knowingly and with intent to affect the outcome" of his or her campaign. Neither the Act nor the Commission's regulations, however, contain such a requirement. See 2 U.S.C. 441d and 11 CFR 110.11.

Under 2 U.S.C. 453, the Act and Commission regulations supersede any provision of state law with respect to election to Federal office. See also 11 CFR 108.7. The House Report accompanying the 1974 Amendments to the Act states in part that "[t]he provisions of the conference substitute make it clear that the Federal law occupies the field with respect to criminal sanctions relating to limitations on campaign expenditures, the sources of campaign funds used in Federal races, the conduct of Federal campaigns, and similar offenses, but does not affect the States' rights to prohibit false registration, voting fraud, theft of ballots, and similar offenses under State law."⁴ The Report also states that Federal law is controlling "with respect to reporting and disclosure of political contributions to and expenditures by Federal candidates and political committees, but does not affect State laws as to the manner of qualifying as a candidate, or the dates and places of election."⁵

Commission regulations follow these expressions of legislative intent by explaining that the Act and regulations issued thereunder supersede and preempt State law with respect to the organization and registration of political committees supporting Federal candidates, the disclosure of receipts and expenditures by Federal candidates and political committees, and limitations on contributions and expenditures regarding Federal candidates and political committees. 11 CFR 108.7(b).

In several advisory opinions involving factual situations similar to the one you have presented, the Commission has concluded that the Act preempts provisions of state law. For example, in Advisory Opinion 1978-24, the Commission held that the Act superseded and preempted a Washington statute that required designation of party affiliation on all campaign advertising. In Advisory Opinion 1980-36, the Commission concluded that the Act preempted §3599.09 of the Ohio Revised Code, which required that a published political communication designed to promote the nomination or election or defeat of a candidate must contain the name and residence address of the chairman or secretary of the organization issuing the communication, or the person responsible for the communication. Finally, in Advisory Opinion 1981-27, the Commission concluded that the Act superseded and preempted a Houston, Texas, ordinance concerning the placement of a "warning" on all political campaign materials placed, posted, or erected in the city, insofar as that ordinance was applied to elections to Federal office. See also Advisory Opinion 1978-54.

³ The Ohio statute defines the term "campaign materials" to include "sample ballots, an advertisement on radio or television or in a newspaper or periodical, a public speech, [or a] press release..." Ohio Rev. Code Ann. §3599.091(B).

⁴ House Report of the Committee of Conference on the Federal Election Campaign Act Amendments of 1974 (Report No. 93-1438, 93d Cong., 2d Sess., 69, 1974).

⁵ *Id.* at 100-101.

On the basis of these opinions and the clear legislative history of 2 U.S.C. 453, the Commission concludes that to the extent §3599.091(B)(1) of the Ohio Revised Code applies to the Committee's use of the described logo, the Act and regulations supersede and preempt this provision of State law.

The 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)

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures (AOs 1981-27, 1980-36, 1978-54, and 1978-24)