FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 11, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-19

Robert F. Bauer
Perkins Coie
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

Dear Mr. Bauer:

This responds to your letter of May 27, 1986, requesting an advisory opinion on behalf of the Democratic Senatorial Campaign Committee ("DSCC") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Acts), and commission regulations to the acceptance of primary election contributions by unopposed Senate candidates from Florida and South Carolina who are not involved in popular primary elections.

Your letter states that the DSCC is a political committee established and maintained by the National Democratic Party. The DSCC's primary concern is to support Democratic nominees for the United States Senate. You state that, as part of its support, DSCC occasionally acts as a fundraising agent for certain candidates by locating donors who may be interested in making direct contributions to candidates.* In performing this activity, the DSCC has certain questions concerning the permissibility of donors' and candidates' making and receiving of contributions in connection with the Florida and South Carolina primary elections. In these two states, state law eliminates primary elections for unopposed candidates.

You ask two questions.

1) May a candidate accept contributions under the Act with respect to a "primary" election, in those states where no popular primary is held?

2) Does federal law preempt any potentially conflicting state law on this question?

* As your request indicates, DSCC expenditures for this activity would be subject to limit as either contributions (in kind) or coordinated political party expenditures pursuant to 2 U.S.C. 441a(h), 441a(d).

Specifically, if there is no primary election under state law, does federal law nevertheless prevail in establishing a primary election for contribution limitation purposes?

With respect to your first question, the Act's contribution limits apply to contributions made to a candidate for Federal office with respect to each separate election in which that candidate participates as a candidate. 2 U.S.C. 441a(a)(1), (2), and (6). The fact that a candidate is unopposed does not disqualify him or her as a participating candidate in that election. Commission regulations specifically state that an election in which a candidate is unopposed is a separate election. 11 CFR 110.1(j)(2). Section 110.1(j)(3) further states that if no primary election is held because a candidate is unopposed, the date on which the primary would have been held shall be the date of the primary for contribution limitation purposes.

Accordingly, regardless of whether the unopposed candidate is involved in a popular primary election, such a candidate who has qualified for the nomination of a political party has a separate contribution limitation for the primary election and a separate contribution limitation for the general election. See Advisory Opinions 1986-12, 1984-54, 1978-65, and 1978-41. The Commission has recently concluded that unopposed candidates also have a pre-primary election reporting obligation. Advisory Opinion 1986-21, superseding (in part) Advisory Opinions 1978-65 and 1978-41.

Your second question deals with the preemption of state laws in South Carolina and Florida. In these two states, you explain, an unopposed candidate's name does not appear on the primary election ballot. You do not, however, cite any specific Florida, South Carolina, or other state statutes that purport to prohibit unopposed candidates for Federal office from accepting contributions with respect to a primary election that is not held. Therefore, in the absence of a specific statute that presents that scenario, this opinion may not address your preemption question. 11 CFR 112.1(b). For your information, the Commission notes that 2 U.S.C. 453 states that the Act and its regulations "supersede and preempt any provision of State law with respect to election to Federal office." Commission regulations at 11 CFR 108.7(b)(3) specifically provide that the Act supersedes state law with respect to limitations on contributions to Federal candidates and Political committees. See also Advisory Opinions 1986-11 and 1978-66.

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)

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures (AOs 1986-21, 1986-12, 1986-11, 1984-54, 1978-66, 1978-65, 1978-41)