



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 27, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-21

Timothy C. Houpt
Houpt, Eckersley & Downes
419 Boston Building
Salt Lake City, UT 84111

Dear Mr. Houpt:

This responds to your letter dated June 4, 1986, on behalf of the Wayne Owens for Congress Committee, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the filing of a pre-election report before the party convention.

The Wayne Owens for Congress Committee is the principal campaign committee of Wayne Owens, a candidate for the Democratic Party's nomination for election to the United States House of Representatives from the Second Congressional District of Utah. Mr. Owens has filed his Statement of Candidacy and has registered his principal campaign committee with the Commission. You state that Mr. Owens is the only Democrat who has filed for his party's nomination for election to Congress from the Second District.¹ You add that Mr. Owens will, thus, be nominated at the state party convention on June 28, 1986.

You ask whether the Wayne Owens for Congress Committee, pursuant to 11 CFR 104.5(a)(1)(i), must file a pre-election report before the state party convention since Mr. Owens is unopposed for nomination.

¹ Under Utah's election law, individuals who wished to be candidates for nomination at the party convention were required to file with the lieutenant governor's office by April 16, 1986. Mr. Owens was the only Democrat to file as a congressional candidate from the Second District.

The Act provides that the treasurer of a congressional candidate's principal campaign committee shall file a pre-election report before "any election in which such candidate is seeking...nomination for election." 2 U.S.C. 434(a)(2)(A)(i). Commission regulations express this requirement with respect to any "primary and general election" in which the candidate seeks election. 11 CFR 104.5(a)(1)(i). The Act and Commission regulations define "election" to include "a convention or caucus of a political party which has authority to nominate a candidate." 2 U.S.C. 431(1)(B); 11 CFR 100.2(e).

The Commission has previously determined that the party convention in Utah does have the authority to nominate a candidate for election and, thus, qualifies as an election under the Act. Advisory Opinion 1978-30.² The Commission also stated in this opinion that a candidate for nomination at the party convention was required to file a pre-election report with respect to the convention because it was an election under the Act. The facts presented, however, did not indicate whether or not the requesting candidate was unopposed for nomination at the convention.

In Advisory Opinion 1978-41, the Commission concluded that a primary election in which a candidate is unopposed is a separate election requiring pre- and post-election³ reporting if the candidate's name appeared on the ballot. Further, in Advisory Opinion 1978-65, the Commission decided that a general election is still considered an election for contribution limitations and reporting requirements even though the candidate is unopposed and his name will not appear on the ballot.

Consistent with that reasoning, the Commission now determines that the state party convention in Utah qualifies as an election under the Act regardless of whether a candidate is unopposed for nomination, and that the Wayne Owens for Congress Committee should file a pre-election report pursuant to 11 CFR 104.5(a)(1)(i) as to that convention.

To the extent that Advisory Opinions 1978-41 and 1978-65 indicate a different result would be reached as to reporting requirements for primary elections for which a candidate is unopposed or a candidate's name will not appear on the ballot, those opinions are superceded.⁴

² Although Utah has made revisions to its election law since 1978, it has not substantively changed the provisions on which the Commission based its ruling in Advisory Opinion 1978-30

³ The 1980 Amendments to the Federal Election Campaign Act (Act) eliminated the requirements for filing post-election reports for the primary.

⁴ These opinions were issued at a time when the Commission had greater flexibility to waive the reporting requirements of candidates and their committees. Since the 1980 amendments to the Act the Commission's discretion to waive reports has been all but eliminated.

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 1978-65, 1978-41, and 1978-30)