



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 11, 1986

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-29

Honorable Fortney H. Stark  
U.S. House of Representatives  
1125 Longworth House Office Building  
Washington, D.C. 20515

Dear Representative Stark:

This responds to your letters of July 21 and August 2, 1986, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the preparation and distribution of a slate card.

You are a candidate for re-election to the U.S. House of Representatives from the 9th Congressional District of California. You have designated the "Pete Stark Re-Election Committee" as your principal campaign Committee. You stated that your Committee is considering developing its own slate card to support your candidacy and that of several of your friends. Your Committee and the Alameda county Democratic Central Committee will decide which candidates to include on the slate card. You add that the slate card will list only one other candidate for Federal office, a candidate for the U.S. Senate, if that candidate gives consent or authorization to be included on the slate card.

You state that your Committee will pay for the slate card, but that it will seek proportional reimbursements from each listed candidate. For example, if ten candidates are listed, each will be asked to pay one-tenth of the cost. If one or more candidates do not wish to pay any or all of their share, your Committee will pay for that portion. You add that the slate card will be sponsored by a "committee" which is yet to be given a name. You further state that the distribution of the slate card will be limited to the 9th Congressional District. You add that you intend to design the card so that it can be handed out in public and inserted on door knobs as well as mailed through some form of bulk postal permit.

You ask for guidance on how your proposed slate card activity may be undertaken in compliance with the Act and Commission regulations.<sup>1</sup>

The Act and Commission regulations exclude from the definition of "contribution" and "expenditure" the payment by a candidate for any public office (Federal, state, or local), or by the candidate's authorized committee, of the costs of campaign materials which include information on or reference to any other candidate and which are used in connection with volunteer activities. 2 U.S.C. 431(8)(B)(xi); 11 CFR 100.7(b)(16) and 100.8(b)(17). This exception includes pins, bumper stickers, handbills, brochures, posters, and yard signs, but it does not include the use of broadcasting, newspapers, magazines, billboards, direct mail, or similar types of general public communication or political advertising.

Commission regulations provide, however, that for purposes of this exception, "direct mail" means mailings by commercial vendors or mailings made from lists which were not developed by the candidate. Furthermore, the payment of the portions of the costs of such materials allocable to Federal candidates shall be made from contributions subject to the limitations and prohibitions of the Act. See 11 CFR 100.7(b)(16) and 100.8(b)(17). The purpose of this provision is to encourage candidates to run with other candidates as a team and to permit candidates to pay for certain types of campaign materials without the payment being either a contribution or expenditure to the other candidate. See 125 Cong. Rec. 23,815 (1979) (remarks of Rep. Frenzel), reprinted in FEC Legislative History of Federal Election Campaign Act Amendments of 1979 at 446 (1983).

Your proposed slate card, when used in connection with volunteer activities, such as handing it out in public or inserting it on door knobs, is the type of campaign material to which this exception applies. This exception also applies to mailings of this card that are made by your committee from lists developed by you or your committee. To the extent that your committee uses the slate card in this manner, the payments by your committee of the costs of the slate card will not constitute a contribution or expenditure by your committee to another Federal candidate, even if your committee pays all of the costs allocable to the other Federal candidate. Similarly, the payments by other listed candidates (Federal, state, or local) for the costs of the slate card, when used in connection with their volunteer activities, or in mailings made by them from lists they have developed, will not constitute contributions or expenditure to you.<sup>2</sup>

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<sup>1</sup> You included in your request copies of two memoranda relating to slate card activities and asked for a critique of them. In view of the Commission's response to your questions in this opinion, no comment on these memoranda is necessary. Such comments would appear to represent an advisory opinion on general questions of interpretation or hypothetical situations, or regarding the activities of third parties. Commission regulations provide that advisory opinions may not be issued in those circumstances. 11 CFR 112.1(b); see also 2 U.S.C. 437f. Moreover, your proposed activity is legally and factually distinguishable from that addressed in Advisory opinion 1984-62 or that involved in the FEC v. Californians for Democratic Representation litigation.

<sup>2</sup> Commission regulations permit an advisory opinion to address only the proposed activities of the requesting person. See 11 CFR 112.1(b). Since no candidate who will be listed on the proposed slate card has joined in making this request, the opinion is issued only with respect to you and your committee. Nevertheless, Commission regulations also provide that any advisory opinion may be relied upon by "any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered." 11 CFR 112.5(a)(2). The exception for volunteer activities, by its express terms, is available to state and local candidates as well as Federal candidates.

Furthermore, since for purposes of this exception these payments are not expenditures and the permitted mailings are not direct mail, the slate cards used in connection with volunteer activities will not require a disclaimer. See 2 U.S.C. 441d; 11 CFR 110.11. Your committee, however, is not precluded from including a disclaimer. This conclusion will not be affected by identifying your yet-to-be-named "committee" as sponsor of the slate card as long as all payments for the card are made only by the listed candidates or their authorized committees and not by the sponsoring "committee."

Your principal campaign committee should, however, report its payments for the slate card as "operating expenditures." Since you state that other listed candidates may reimburse your committee for their proportional share, your committee should report such payments as offsets to operating expenditures." See 11 CFR 104.3. Also, since these reimbursements will be made to your committee, they must be made from funds permissible under the Act, even if they are allocable only to a state or local candidate's portion. See Advisory Opinion 1980-38.

This exception for volunteer activities, however, does not apply to slate cards used in mailings by commercial vendors or in mailings made from lists not developed by a listed candidate. In these instances, if your committee pays for the portion of the costs of such mailings allocable to a Federal candidate, that amount will constitute a contribution and expenditure under the Act to that Federal candidate.<sup>3</sup> See 2 U.S.C. 441a(a)(7). As such, the amount will also be subject to the contribution limitations at 2 U.S.C. 441a(a)(1)(A). Moreover, slate cards used in such direct mailings require a proper disclaimer with respect to you and the other Federal candidate. See 2 U.S.C. 441d(a); 11 CFR 110.11(a).

Therefore, if your committee pays a portion of the costs of the slate cards used in direct mailings that are allocable to another Federal candidate, your committee should report that amount as a contribution to the Federal candidate (and subject to the Act's contribution limitations). The other Federal candidate should report this amount as a contribution received and as an expenditure made. See 11 CFR 104.13(a). Where your committee pays a portion of the costs allocable to a state or local candidate, this payment may be reported as either an "operating expenditure," if it is made to influence your own election, or as an "other disbursement." See Advisory Opinion 1986-30. Payments made to your committee by listed Federal, state, or local candidates for their allocable share of these costs will also be reportable as "offsets to operating expenditures" and must be made from funds permissible under the Act. See Advisory Opinion 1980-38.

Since you do not state that the yet-to-be-named sponsoring "committee" will be collecting funds from the listed candidates or making payments for your proposed slate card activity, it is not necessary to consider questions that may arise if it did so. Also, since you state that the Alameda County Democratic Central Committee will only participate in the selection of the listed candidates (and thus presumably will not make any payments for this activity) and since it has not joined in this request, it is not necessary to address the Act's exception for slate cards financed by state or local committees of a political party. See 2 U.S.C. 431(8)(B)(v) and

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<sup>3</sup> You state that the other Federal candidate will be included on the slate card only with consent or authorization. For this reason, it is not necessary for the Commission to address the circumstances where your committee pays the portion of the costs allocable to a Federal candidate who is listed without his or her consent or authorization.

431(9)(B)(iv); 11 CFR 100.7(b)(9) and 100.8(b)(10); see, e.g., Advisory Opinions 1980-110 and 1978-89.

The Commission notes that the Act preempts any state law with respect to election to Federal office. See 2 U.S.C. 453; 11 CFR 108.7. This provision will preempt the application of state law to you, your committee, and the U.S. Senate candidate (as mentioned in your request) with respect to the proposed slate card activities, including any disclaimer requirement with respect to you and the Senate candidate. This provision, however, will not preempt the application of state law with regard to your committee's providing certain information to listed state and local candidates that they may need for state reporting purposes. See Advisory Opinions 1986-27 and 1986-11. Since no state or local candidate has joined in making this request, the Commission expresses no opinion regarding the application of the Act's preemption provision to state and local candidates who participate in these slate mailings.

The Commission also expresses no opinion regarding the application of House rules or other Federal statutes, such as postal regulations, since such questions are outside its jurisdiction.

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.

Sincerely yours,

(signed)

Joan D. Aikens  
Chairman for the  
Federal Election Commission

Enclosures (AOs 1986-30, 1986-27, 1986-11, 1980-110, 1980-38, and 1978-89)

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