



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 14, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-31

David E. Johnson
Executive Director
Democratic Senatorial Campaign Committee
430 South Capitol, S.E.
Washington, D.C. 20003

Dear Mr. Johnson:

This responds to your letter of August 14, 1986, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the simultaneous special and general elections for the United States Senate in North Carolina.

You state that the Democratic Senatorial Campaign Committee ("DSCC") is a national committee of the Democratic Party and promotes the election of Democratic candidates to the United States Senate. You explain that DSCC advises candidates on fundraising and related matters and that DSCC is preparing advice to potential contributors for its Democratic candidate in North Carolina. You add that DSCC also serves as the agent of the Democratic National Committee and state committees for purposes of making coordinated party expenditures in senatorial general election campaigns pursuant to 2 U.S.C. 441a(d).

You state that on November 4, 1986, the State of North Carolina will hold both a regularly scheduled general election for the U.S. Senate for a full, six-year term ("the regular election") and a special election for the remainder of the current term for the same Federal office ("the special election"), which is the office held by Senator John East until his death. In the May 6, 1986, North Carolina primary election, Mr. Terry Sanford was nominated as the Democratic Party's candidate in the regular election, and Mr. James Broyhill was nominated as the Republican Party's candidate in the regular election. After the death of Senator East, the

Governor set a special election for November 4, 1986, to fill the Senate vacancy¹ and, in the interim, appointed Mr. Broyhill to fill this vacancy. Mr. Sanford and Mr. Broyhill were subsequently each nominated by the executive committees of the respective parties as their candidates in the special election. Thus, the regular election and the special election for the Senate in North Carolina will feature the same candidates who will stand for election on the same date to the same Federal office but for different terms of that office.

In this context, you present several questions relating to contributions by persons and non-party political committees pursuant to 2 U.S.C. 441a(a), contributions by DSCC pursuant to 2 U.S.C. 441a(h), coordinated party expenditures by DSCC pursuant to 2 U.S.C. 441a(d), and the treatment of contributions and expenditures by the Democratic candidate's authorized committee(s). These questions are set forth and answered separately in the following sections.

A. Contribution Limitations of 441a(a).

You first ask whether the Act's contribution limitations on individuals, multi-candidate political committees, and other persons pursuant to 2 U.S.C. 441a(a)(1) and (2) will apply separately with respect to both the regular election and the special election, so that, for instance, an individual could contribute to the Democratic candidate an aggregate not to exceed \$1,000 with respect to the regular election and an aggregate not to exceed \$1,000 with respect to the special election.

The Act places limitations on the aggregate contributions by persons and multi-candidate political committees to a candidate and his authorized committees "with respect to any election for Federal office." 2 U.S.C. 441a(a)(1)(A) and (2)(A). The Act also specifically provides that these limitations "shall apply separately with respect to each election." 2 U.S.C. 441a(a)(6); see also 11 CFR 110.1(j) and 110.2(d). The Act and Commission regulations define "election" to include both a general election and a special election. A special election is defined as an election which is held to fill a vacancy in a Federal office. A general election is defined to include both an election held in even numbered years on the Tuesday following the first Monday in November and an election which is held to fill a vacancy in a Federal office (a special election) and which is intended to result in the final selection of a single individual to the office at stake. See 2 U.S.C. 431(1); 11 CFR 100.2.

Although the special election and the regular election in North Carolina will feature the same candidates seeking election to the same Federal office and will be held simultaneously, the special election will result in the final selection of a single individual to fill a vacancy in that office's present term while the regular election will select an individual for that office's next full term. Thus, the special election and the regular election both qualify as general elections but still constitute separate elections under the Act and regulations. The Commission has previously stated that when a special election to fill a vacancy in a Federal office and the regular general election for the same office are held simultaneously, but voted on separately, these elections constitute separate elections to which the separate contribution limitations of 2 U.S.C. 441a(a)(1) and (3) apply. Advisory Opinion 1984-42.

¹ The setting of the special election for Nov. 4th was apparently required by North Carolina law. See, N.C. Gen. Stat. 163-12 (1985).

Accordingly, the Act's contribution limitations at 2 U.S.C. 441a(a)(1) and (2) will apply separately to the aggregate amounts contributed to the Democratic Senate candidate by persons and multi-candidate political committees with respect to the special election and with respect to the regular election.

B. Candidate's Authorized Committee(s)

You state by letter dated September 4, 1986, that DSCC has been authorized by the Terry Sanford for U.S. Senate Committee to ask several questions relating to the committee's treatment of contributions² and expenditures regarding the special and regular elections. These questions relate to the designation, accounting, and use of contributions and the reporting of contributions and expenditures for the two elections.

1. Designation of Contributions

You ask whether contributor checks should be clearly designated for the election for which they are intended.

Commission regulations permit contributors to designate their contributions for a particular election, but require such designations only when contributors make contributions with respect to an election other than the next, scheduled one. Instead, Commission regulations provide, for instance, that undesignated contributions made after the primary election but before the general election are deemed made with respect to the general election. See 11 CFR 110.1(a)(2).

In the 1986 Senate elections in North Carolina, however, both the regular election and the special election occur simultaneously and are the next scheduled elections after the primary election. Thus, in these circumstances, the committee may treat undesignated contributions which are otherwise lawful as made with respect to either election or both elections. The committee may allocate a portion of an undesignated contribution to the regular election and another portion to the special election as long as such allocation does not result in the contributor's exceeding his or her (or its) aggregate contribution limitations for both elections. The committee need not seek redesignations from the contributors in this special circumstance.

2. Separate Accounts

You ask whether the committee should maintain a separate account for the two elections (and so advise its contributors).

The Commission has previously stated that a candidate who participates in both a special election and a general election for the same Federal office is not required to establish two separate committees with respect to each election. Advisory Opinion 1980-80. Instead, such candidate may establish one committee for both elections. Nevertheless, if he does establish only

² The contributions referred to in Part 3 are contributions by persons and multi-candidate political committees subject to the limitations of 2 U.S.C. 441a(a).

one committee, the committee should separately account for contributions made with respect to the special election and those made with respect to the regular election, since there are separate contribution limitations with respect to each election. This requirement for separate accounting is analogous to that required for primary and general election contributions pursuant to 11 CFR 102.9(e), which is similarly based on the application of the separate contribution limitations. The committee is not, however, required to advise its contributors that it is maintaining separate accounts for these contributions.

3. Use of Designated Contributions

Notwithstanding the response to the previous question, you ask what steps the committee should take to assure that the regular election contributions are used only for that election and that special election contributions are used only for the special election.

In Advisory Opinion 1986-17, the Commission stated that contributions designated for a particular election could be expended only for certain expenses related to the designated election. This opinion, however, was limited to the period prior to when it was established that the candidate would participate in the designated election.

Here, it is already established that Mr. Sanford will participate in both the special election and the regular election for the U.S. Senate on November 4, 1986. Therefore, contributions legally made and accepted with respect to these two elections may be expended for either election or both elections. See, e.g., Advisory Opinion 1980-80; cf., 11 CFR 110.3(a)(2). Mr. Sanford's committee need not take any specific steps to insure that contributions designated for the regular election are expended solely for that election or that contributions designated for the special election are expended solely for that election.

4. Reporting of Contributions and Expenditures

You further ask whether the committee should prepare and file its reports with the Commission to identify specifically regular election contributions and expenses and special election contributions and expenses and, if so, how such reporting should be made.

As noted in the response to the previous questions in Part B, since separate contribution limitations apply with respect to the two elections, the committee is required to separately account for special and regular election contributions, but it is not required to use such contributions only for the particular election for which they are given. The Act and Commission regulations require the committee to disclose all of its receipts and disbursements, and to itemize those contributions and expenditures that aggregate in excess of \$200 per calendar year, on its reports filed with the Commission. See 2 U.S.C. 434(b); 11 CFR 104.3. The treasurer of the committee is required to file a complete and accurate report on the appropriate form. 11 CFR 104.2(a) and 104.14(d).

The Schedule A form is used to itemize receipts and provides a place for identifying the election for which a receipt is given. The instructions for Schedule A state that an authorized committee must indicate the election for which a receipt is given. The Schedule 3 form is used to

itemize disbursements and also provides a place for identifying the election for which a disbursement is made. The instructions for Schedule B, however, state that this identification is required only for contributions to Federal candidates or authorized committees. Therefore, the committee should identify the election for which an itemized contribution is given, but it need not identify the election for which an itemized operating expenditure is made.

The Commission considered alternative responses to your questions relating to 2 U.S.C. 441a(d)(3) and 441a(h) but was unable to respond to those questions by the required affirmative vote of four members of the Commission. 2 U.S.C. 437c(c); 11 CFR 112.4(a).

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 1986-17, 1984-42, and 1980-80)

P.S. Commissioner Josefiak voted to approve this opinion and will submit a concurring opinion at a later date.