



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 12, 1987

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-15

James P. Schoener
McGuiness & Williams
Suite 1200
1015 15th Street, N.W.
Washington, D.C. 20005

Dear Mr. Schoener:

This refers to your letters dated May 19 and 29, 1987, which request an advisory opinion on behalf of the Kemp for President Committee concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to various activities by Mr. Kemp's presidential campaign in connection with the selection of delegates to the 1988 national nominating convention of the Republican Party.

Your request indicates that Representative Jack P. Kemp is a 1988 presidential candidate and has designated a principal campaign committee, the Kemp for President Committee. On May 21, 1987, the Commission made an initial determination of Mr. Kemp's eligibility for Federal matching funds pursuant to 26 U.S.C. 9033. The Kemp campaign proposes to have contacts with individuals who seek, either separately or in delegate groups (delegate committees), selection as delegates to the 1988 Republican national nominating convention. The Kemp campaign anticipates that it will authorize or approve certain of these prospective delegates ("the delegates") as Kemp-sponsored or Kemp-certified delegates in several states. You note the wide variety and "peculiarities of different state law requirements involving delegates," and also state that State requirements "in some manner involve the candidate in approval or listing proposed delegates for selection as national convention delegate."

On the basis of the foregoing factual representations you have posed four questions regarding the effect of possible contacts between the Kemp campaign and delegates, as well as contacts with delegate committees, on the ability of those delegates or delegate committees to make independent expenditures on behalf of Mr. Kemp's presidential campaign.

Your questions are restated:

- (1) If a delegate committee requests authorization from Mr. Kemp to use his name in their committee title, would such authorization destroy the ability of the delegate committee to make independent expenditures on his behalf?
- (2) In states where statutes or party rules require Mr. Kemp to approve a list of delegates, or give his order of preference among several competing delegates, would his approval or certification of favored delegates prevent them from forming delegate committees which could raise and spend funds independently of, and without attribution to, the Kemp for President Committee?
- (3) In states where competing groups of delegates or delegate committees assert their allegiance to Mr. Kemp, may he authorize one group as Kemp delegates and require the other group to state that they are unauthorized, or may Mr. Kemp refuse the unauthorized delegates any right to use his name?
- (4) May the Kemp for President Committee make exchanges of mailing lists with delegate committees without adversely affecting the ability of the delegate committees to make independent expenditures on behalf of Mr. Kemp's presidential candidacy?

The Commission considered proposed responses to questions (1) and (2), but was unable to agree on an opinion responding to those questions by the required affirmative votes of four members. 2 U.S.C. 437c(c), 11 CFR 112.4(a). Copies of Agenda Documents #87-73 and #87-73-A are enclosed for your information. These documents were considered by the Commission in its meetings of July 9, 16, and 23, 1987.

With respect to question (3), Commission regulations provide that a delegate committee is required to use the word "delegate(s)" in its committee name and may, whether or not it is authorized to do so, include the name of the presidential candidate it chooses to support in its committee name. 11 CFR 102.14(b)(1). This permissible, but nonmandatory, use of a presidential candidate's name in the delegate committee name, is a limited exception to the Act's prohibition against using a candidate's name in the name of any political committee other than an authorized committee of such candidate. 2 U.S.C. 432(e)(4). It recognizes the somewhat unique purposes and functions of delegate committees in the presidential nomination process. See generally 11 CFR 110.14. Because delegate committees are permitted to use Mr. Kemp's name in their committee name, whether or not he authorizes such use, Mr. Kemp has no legal authority under the Act for refusing or denying an "unauthorized" delegate committee the "right" to use his name or requiring any delegate committee (including a delegate committee group that he does not wish to "authorize") to state that they are "unauthorized." Expenditures by delegate committees for public communications may be subject to 'disclaimer' requirements, of course, and the receipts and disbursements of delegate committees may also be subject to the disclosure requirements for political committees under the Act and regulations. See 2 U.S.C. 441d, 11 CFR 110.11 and 11 CFR 110.14(e).

In question (4) you ask whether Kemp delegate committees, which you describe as "raising funds independent of the" Kemp for President Committee, may enter into exchanges of mailing lists with the Kemp Committee without adversely affecting the ability of those delegate committees to make independent expenditures in support of Mr. Kemp's campaign.* The Commission answers this question in the negative.

In response to question (4), the Commission concludes that providing mailing lists to delegate committees would preclude the ability of those committees to make independent expenditures on behalf of Mr. Kemp's presidential candidacy. Such providing of lists, whether or not in a 'fair' exchange, would constitute coordination with and assistance of the delegate committee's fundraising efforts undertaken to finance the expenditures on Mr. Kemp's behalf, and would indicate the resulting expenditures were made "with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, the presidential candidate or authorized committee of such candidate." 11 CFR 110.14(d)(2)(ii)(B).

For your information, the Commission notes that the regulations concerning delegates are currently under review and consideration by the Commission.

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,

(signed)

Scott E. Thomas
Chairman for the Federal Election Commission

Enclosures (AO's 1982-41 and 1981-46)

P.S. Several Commissioners have indicated that they will file concurring opinions at a later date.

*/ Your question (4) cites Advisory Opinions 1982-41 and 1981-46 as precedents for approving the exchanges you propose here. Those opinions did not reach any issue, or imply any conclusion, with respect to list exchanges in the context of independent expenditure activity by any of the entities participating in the exchanges. That factual situation was not presented in those requests, and thus those opinions did not address it. See 2 U.S.C. 437f(c), 11 CFR 112.5(a).