



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 15, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-10

William E. Taylor
7006 SW Burlingame Avenue
Portland, OR 97219

Dear Mr. Taylor:

This responds to your letters of December 16, 1987, and February 18, 1988, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to your campaign for election as a precinct committeeperson and your participation in delegate selection for the Democratic national nominating convention.

According to materials you provided, at the May 17th Oregon primary election, Democratic voters will (1) vote for a candidate for President in a presidential preference primary; and (2) elect precinct committeepersons. See ORS §§248.015, 254.056, and 254.115. The vote in the presidential preference primary will determine the apportionment among the presidential candidates of delegates to the national nominating convention. ORS §248.315. After the primary, the elected precinct committeepersons will meet in congressional district conventions to select individual delegates to the state convention and delegates to the national nominating convention. See ORS §248.315. The state convention will also select additional delegates to the national nominating convention. Persons are not required to be precinct committeepersons in order to qualify for selection as delegates to the national convention.

You state though that persons seeking selection as such delegates must file with the state party by 5:00 p.m. on May 16, 1988, and pledge to support a particular presidential candidate. State law requires candidates for precinct committeeperson to identify their presidential preferences when filing as candidates. ORS §249.031(h)(3). Their preferences, however, are not listed on the primary election ballot. ORS §254.115. In addition to selecting delegates to the state and national conventions, precinct committeepersons are party officials elected to two-year terms. As such, they make up the county central committees and elect county central committee officers and state central committee members. See ORS §§248.015(5), 248.031, 248.033, and 248.075.

You state that you are currently a Democratic precinct committeeperson in Multnomah County, Oregon, and plan to run for re-election in the May 17, 1988, primary. You add that you also plan to run for delegate to the state convention and, possibly, the national convention. You state that you are supporting a particular candidate for nomination as the Democratic Party's candidate for President and plan to participate in his Oregon campaign. You further state that you may associate or combine with other supporters of the same presidential candidate who are also seeking election as precinct committeepersons ("your associates") to further your respective elections as precinct committeepersons or as delegates, or both.

In this regard, you explain that, in connection with your campaign for precinct committeeperson, you may include references to this presidential candidate in your campaign leaflets that will be "dropped door to door." You add that in campaigning for precinct committeeperson you may also "drop campaign material for the presidential candidate, if the presidential candidate's committee pays for and supplies this material as part of its own campaign." You add that your precinct campaign material will not refer to your plans to seek selection as a delegate to the state or national conventions.

You further explain that you have made a contribution to the presidential candidate you support and have communicated, by telephone and in writing, with his committee about your activities undertaken at the local level that could result in in-kind contributions to his committee. You add that although you do not hold or expect to hold a position in the candidate's local organization, your associates hold or will hold positions in the candidate's local organization.

You ask these questions:

- (1) Whether the delegate selection rules at 11 CFR 110.14 apply to candidates for precinct committeeperson in the Oregon primary election and, if so, whether association among such candidates will make them a delegate committee?
- (2) Whether the association of candidates for precinct committeeperson in the Oregon primary election will require such group of persons to register as a political committee?
- (3) Whether references to presidential candidates in the campaign material of precinct committeeperson candidates or the distribution by them of a presidential candidate's own campaign material will constitute in-kind contributions to the presidential candidate?
- (4) Whether expenditures by a precinct committeeperson candidate can be allocated between federal and nonfederal activities because a precinct committeeperson also performs functions related solely to state and local party affairs?
- (5) Whether you, as a precinct committeeperson candidate, individually or with other such candidates would be considered affiliated with the presidential candidate you support?

Under the Act, an "election" is defined to include a national nominating convention as well as a primary election held to select delegates to a national nominating convention or to express a

presidential nomination preference. See 2 U.S.C. 431(1)(B), (C), and (D). Commission regulations explain that the Act applies to funds received and disbursed to influence the selection of delegates to a national nominating convention at "all levels of a delegate selection process." 11 CFR 110.14(a) and Explanation and Justification of the regulations at 52 Fed. Reg. 35530 (1987).¹

Under the circumstances described in your request, the Commission concludes that the election of precinct committeepersons in Oregon on May 17th, by itself, will not be an "election" or a "level of a delegate selection process" under the Act and regulations. See Advisory Opinion 1986-6. Precinct committeepersons are party officials elected for two-year terms. One of the duties of precinct committeepersons is to select the persons as delegates to the state and national nominating conventions. The apportionment among presidential candidates of delegates to the national convention, however, is determined by the voters in the presidential preference primary, not by the elected precinct committeepersons. Furthermore, although candidates for precinct committeeperson may declare their presidential preference on their filing papers, such preferences are not identified on the primary ballot in which candidates for precinct committeeperson seek election. Presidential candidates may derive some indirect or tangential benefit from having their supporters elected as precinct committeepersons. Nevertheless, such a benefit by itself is insufficient to make the election of precinct committeepersons in Oregon an "election" under the Act or a "level" of the Oregon delegate selection process. Accordingly, activities you and your associates undertake solely to influence your election as precinct committeepersons will not be subject to the Act or regulations.

The Commission, however, concludes that the May 17th presidential preference primary election is an "election" under the Act since it is an election held to express a presidential nomination preference. 2 U.S.C. 431(1)(D). Accordingly, activities you and your associates undertake to influence the May 17th presidential preference primary will be subject to the Act and regulations. If your group receives contributions aggregating more than \$1,000 in 1988 or makes expenditures aggregating more than \$1,000 in 1988, it will become a political committee under the Act and must register and report. These conclusions apply to any group of persons who associate for the purpose of influencing the presidential preference primary whether or not they may also be candidates for precinct committeeperson or any other office.

Nevertheless, because you are such a candidate, your disbursements for the distribution of your own campaign material with references to a presidential candidate will qualify for the exemption for campaign materials of a candidate for public office² used in connection with volunteer activities. See 2 U.S.C. 431(8)(B)(xi). These disbursements will not be counted toward the \$1,000 threshold for political committee status. This exemption does not include costs incurred in the use of broadcasting, newspapers, magazines, billboards, direct mail, or similar types of general public communication or political advertising.

Your disbursements to disseminate the campaign materials of a presidential candidate, however, will constitute contributions under the Act to the presidential candidate and be counted for purposes of political committee status. See 2 U.S.C. 441a(a)(7)(B). These disbursements will also be reportable by the candidate's committee as in-kind contributions and as expenditures and will be chargeable to the presidential candidate's expenditure limitations. The regulations provide

that disbursements (by any person) made to disseminate a candidate's campaign materials constitute in-kind contributions. If they are also made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, the candidate or his authorized committee, they shall be reportable by such candidate as an in-kind contribution and as an expenditure. 11 CFR 109.1(c), 109.1(d)(1) and 110.8(g). See also Advisory Opinion 1987-15. This conclusion applies whether or not you and your associates disseminate such materials as part of your volunteer activity on behalf of the presidential candidate or in connection with your campaign for precinct committeeperson.

Of course, the value of your uncompensated volunteer services is not a contribution. You may also exclude from the amount treated as a contribution those disbursements for any unreimbursed travel expenses made by you or your associates on behalf of the presidential candidate to the extent that the cumulative value of such activity per individual does not exceed \$1,000 with respect to any single election. Furthermore, any unreimbursed payment from your (or your associates') personal funds for usual and normal subsistence expenses incidental to such volunteer activity is also not a contribution. See, e.g., 2 U.S.C. 431(8)(B)(i) and 431(8)(B)(iv); 11 CFR 100.7(b)(3) and 100.7(b)(8).

Commission regulations do not provide for allocation of expenditures based on the different functions of an office. Instead, expenditures on behalf of more than one candidate are attributed to each candidate to reflect the benefit reasonably expected to be derived. 11 CFR 106.1(a). Thus, you should allocate such disbursements between the candidate(s) for precinct committeeperson or any other office, and the presidential candidate being supported, on the basis of the benefit reasonably expected to be derived by each candidate. The portion of these disbursements allocated to the presidential candidate must be made with funds permissible under the Act. See 2 U.S.C. 431(8)(B)(xi). If your group also qualifies as a political committee under the Act, it must also report these allocated disbursements.

The regulations also provide for the affiliation of political committees if both such committees are established, financed, maintained, or controlled by the same person. 11 CFR 110.3(a)(1)(ii). The regulations also set out various factors to consider in determining whether two such committees are affiliated. 11 CFR 110.3(a)(1)(iii). You state that your associates hold or will hold positions in the presidential candidate's local organization. Such a statement is not sufficiently specific relative to the cited factors to permit a determination at this time whether your proposed group will be affiliated with the presidential candidate's committee. See 11 CFR 112.1(c).

The Commission further notes that the post-primary conventions to select the persons to fill the apportioned delegate positions will be considered a level of the delegate selection process. Compare Advisory Opinion 1988-1. Accordingly, activities you and your associates undertake to influence the selection of one or more delegates to the national nominating convention will be subject to the Act and regulations, particularly the delegate selection regulations. As such, your group may become a delegate committee under the regulations. If it receives contributions or makes expenditures aggregating in excess of \$1,000 in 1988, it will also qualify as a political committee and must register and report. See 11 CFR 110.14(b)(2).

The delegate selection regulations provide that the exemption for campaign materials distributed as part of volunteer activities is available to delegates and delegate committees. See 11 CFR 110.14(f)(1) and 110.14(i)(1). Disbursements made by a delegate or delegate committee to distribute a presidential candidate's own campaign materials, however, will also be treated as a contribution made by the delegate or delegate committee. See 11 CFR 110.14(f)(3) and 110.14(i)(3). These disbursements may also be reportable by the presidential candidate's authorized committee as both a contribution and an expenditure subject to the expenditure limitations. *Id.* Of course, the same exemptions for volunteer services, travel, and subsistence discussed above would also apply to the distribution of a candidate's own campaign materials by a delegate or delegate committee. Furthermore, the allocation rules would also apply to the activities of a delegate or delegate committee. The allocated disbursements must also be made from funds permissible under the Act. See 11 CFR 110.14(c)(2).

The delegate selection regulations also provide for the affiliation of a delegate committee with a presidential candidate's committee and set out the factors to consider whether two such are committees affiliated. 11 CFR 110.14(j). Although you state that your associates hold or will hold positions in the candidate's local organization, the information you have provided is also not sufficiently specific to permit a response at this time to this aspect of your questions. The Commission notes, however, that it has recently addressed this question in somewhat similar circumstances. See Advisory Opinion 1988-1.

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)

Thomas J. Josefiak
Chairman of the Federal Election Commission

1/ Citations to the regulations at 11 CFR 110.14 refer to the regulations published in the Federal Register on September 22, 1987 at 52 Fed. Reg. 35530.

2/ The Oregon statute states that a precinct committeeperson is not considered a public officer "[e]xcept as provided in ORS chapter 260." ORS §248.015(6). Chapter 260, which covers election campaign finance regulations, defines "public office" as "any national, state, county, district, city or political party office or position that is filled by the electors." ORS §260.005(12). Precinct committeepersons are political party offices or positions filled by the electors. ORS §248.015(1). Therefore, because candidates for precinct committeeperson are voted on by the electors and their names appear on the ballot, they are considered candidates for public office for purposes of this exemption.