



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 20, 1988

Vigo G. Nielsen, Jr.  
Nielsen, Merksamer, Hodgson, Parrinello & Mueller  
650 California Street, Suite 2650  
San Francisco, California 94108

RE: AOR 1988-31

Dear Mr. Nielsen:

This is in reply to your letter dated July 5, 1988, written on behalf of four contributors to a Federal campaign committee who seek an advisory opinion whether the Federal Election Campaign Act of 1971, as amended ("the Act"), preempts certain disclosure and aggregation provisions of the Orange County, California, Campaign and Reform Ordinance.

Your letter states that in February 1988 Alfred Baldwin and Deeann Baldwin, husband and wife, and James P. Baldwin and Nancy Baldwin, husband and wife, each contributed \$1,000 to the authorized committee of Harriett Wieder, who was then a candidate for Congress from the 42nd District of California in the June 1988 primary and who is a member of the Orange County Board of Supervisors. When making their contributions, the Baldwins provided the personal contributor information required by the Act, and the Wieder committee included that information on its next Federal campaign report.

You further explain that in May 1988 each couple received a letter from the County of Orange Registration & Elections Division stating that by contributing to the Wieder congressional campaign they had become "a Major Campaign Contributor" ("MCC") to Supervisor Wieder. Orange County Campaign and Reform Ordinance §1-6-4(c). The County had reached this conclusion by aggregating each donor's \$1,000 contribution with the \$1,000 contribution of his or her spouse; the \$2,000 aggregate contribution exceeded the \$1,739 MCC qualifying threshold.

The letters from the County of Orange Registration & Elections Division listed certain consequences of categorizing the Baldwins as MCCs. Among these consequences was the requirement that the Baldwins complete and file a special

MCC financial disclosure form within 30 days. Orange County Campaign and Reform Ordinance §1-6-5. You inform us, however, that subsequently the Orange County District Attorney's Office advised County officials that the Act and Commission regulations preempt the Ordinance's financial disclosure filing requirement when a person attains MCC status by contributing to a Supervisor's Federal political committee. The Baldwins, therefore, were informed that they need not file the disclosure form and will not be subject to possible prosecution for failing to file the form.

The Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. §437d(a). The request must concern a specific transaction or activity that "the requesting person plans to undertake or is presently undertaking and intends to undertake in the future." 11 CFR 112.1(b). Inquiries presenting only a general question of interpretation or the activities of third parties do not qualify as advisory opinion requests. The regulations also explain that such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c). The regulations further explain that this office shall determine if a request is incomplete or otherwise not qualified as an advisory opinion request. 11 CFR 112.1(d).

Your inquiry does not appear to satisfy the requirements established by the Act and Commission regulations. First, the Baldwins are not proposing specific ongoing or future activity to which the Act applies. Their contributing to Supervisor Wieder's congressional campaign is past activity. Second, to the extent your letter refers to future activity, that activity is of a third party, Supervisor Wieder. Third, in the absence of a requestor with standing under the Act and regulations, the Commission may not comment on the interpretation of the ordinance advanced by the Orange County District Attorney's Office.

If you have any questions concerning this letter or the advisory opinion process, please contact this office.

Very truly yours,

Lawrence M. Noble  
General Counsel

by:

  
N. Bradley Litchfield  
Associate General Counsel