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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

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July 2, 1992

AGENDA ITEM
For Meeting of: JUL 30 1992

MEMORANDUM

TO: The Commission
THROUGH: John C. Surry *JS*
Staff Director
FROM: Lawrence M. Noble *LN*
N. Bradley Hitchfield *NBH*
SUBJECT: Draft AO 1992-25

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for July 9, 1992.

Attachment

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ADVISORY OPINION 1992-25

Clay Newton, CPA
Treasurer
Owens for Senate Committee
P.O. Box 959
Salt Lake City, UT 84110

DRAFT

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Dear Mr. Newton:

This responds to your letters dated May 21 and May 12, 1992, requesting an advisory opinion on behalf of the Owens for Senate Committee ("the Committee") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the treatment of a state convention as a separate election.

The Owens for Senate Committee is the principal campaign committee of Congressman Wayne Owens for election to the United States Senate from the State of Utah. Under Utah law, a candidate for U.S. Senate runs for nomination at a state convention of a political party and, if necessary, in a primary election. If the candidate is the party's nominee after this process, he or she runs in the general election. You wish to know whether the state party convention is a separate election for determining contribution limits, thus enabling an individual to make three \$1,000 contributions to the Committee if Mr. Owens is involved in the convention, the primary election, and the general election.

The Act and regulations define "election" to include a general election, a primary election, and "a convention or caucus of a political party which has the authority to nominate a candidate." 2 U.S.C. §431(1)(A) and (B); 11 CFR

3 100.2(b), (c), and (e). The Commission has previously stated
4 that the question of whether a particular event is an
5 election, or a convention or caucus which has authority to
6 nominate a candidate, is determined by an analysis of
7 relevant state law. Advisory Opinions 1986-17, 1984-16, and
8 1978-30.

9 Under Utah law, the delegates at the party primary
10 convention vote for their choice for U.S. Senate nominee.
11 The two persons receiving the highest number of votes for an
12 office are declared the party's nominees to run in the
13 primary election. Utah Code Annotated ("UCA") §20-4-9(8)(g).
14 If, however, a candidate receives 70 percent or more of the
15 votes cast, he or she is the party's nominee without the
16 necessity of running in the primary election. UCA
17 §20-4-9(8)(h). Since the party primary convention has the
18 authority to nominate a candidate by itself, the Commission
19 concludes that it is an election. See Advisory Opinions
20 1986-21 and 1978-30 (both involving the 70 percent rule in
21 Utah).

22 Mr. Owens received 69.7 percent of the delegates' votes
23 at the June 13 convention and is a candidate in the primary
24 to be held on September 8. The Committee may therefore
25 accept contributions under a separate limit for the September
26 8 primary election. These contributions may be made by the
27 same persons who may have already contributed up to the Act's
28 limits for the June 13 convention. See 2 U.S.C. §441a(a)(6).
29 If Congressman Owens receives the party's nomination in the
30

3 September 8 primary, a separate limit will apply for the
4 general election. The Commission cautions that the Committee
5 should comply with the rules set out at 11 CFR 110.1 and
6 110.2 for the application of the limits per election and for
7 the designation of contributions. .

8 This response constitutes an advisory opinion concerning
9 application of the Act, or regulations prescribed by the
10 Commission, to the specific transaction or activity set forth
11 in your request. See 2 U.S.C. §437f.

12 Sincerely,

13
14 Joan D. Aikens
15 Chairman for the
Federal Election Commission

16 Enclosures (AOs 1986-21, 1986-17, 1984-16, and 1978-30)
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