



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 25, 1992

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-31

Kathy A. Magraw, Treasurer
LaRouche for Economic Recovery
P.O. Box 266
Leesburg, VA 22075

Dear Ms. Magraw:

This responds to your letter of July 31, 1992, requesting an advisory opinion regarding the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the filing obligations of James Bevel, as a Vice Presidential candidate.

You state that Mr. Bevel is the Vice Presidential running mate of Lyndon LaRouche, who is running as an independent candidate for President of the United States. The principal campaign committee designated by Mr. LaRouche is LaRouche for President- Independents for Economic Recovery ("the Campaign"). You emphasize that neither candidate will be the nominee of any party, major or minor.

Both candidates constitute a "unified ticket, neither of whom is running independently of the other." Both are seeking "conjoint ballot status in various states." The two candidates intend to issue joint literature and in other respects, you state, to campaign for each other as part of a joint ticket. They will appear as a two candidate ticket on the state ballots where the campaign attains ballot access.

You further explain that Mr. LaRouche has filed a Statement of Candidacy and his designated principal campaign committee has filed a Statement of Organization. However, Mr. Bevel has not filed a Statement of Candidacy, nor formed a principal campaign committee. You assert that he is not yet obligated to file because he has not met the threshold

that applies to candidates under 11 CFR 100.3. You pose three questions regarding his future filing obligations:

1. Must Mr. Bevel file a Statement of Candidacy?
2. Must he designate a principal campaign committee?
3. If he must designate a principal campaign committee, may it be the same committee designated by Mr. LaRouche?

Your questions implicate those provisions of the Act and Commission regulations that address the filing and reporting obligations of a candidate for the office of Vice President and pose issues regarding a joint campaign effort with a Presidential candidate. In general, the Act and Commission regulations envision that the joint campaign of two candidates for President and Vice President should be treated as a single campaign for certain reporting and related purposes.^{1/} However, the Act prescribes an important qualification in that both candidates shall be the nominees of a political party. See 2 U.S.C. 432(e)(1) and 434(a)(10) and 11 CFR 103.4.

For example, section 432(e)(1) states that a candidate for Federal office (other than the nominee for the office of Vice President) shall designate in writing a political committee to serve as the principal campaign committee of such candidate. 2 U.S.C. 432(e)(1), 11 CFR 101.1(a). This provision clearly exempts the Vice Presidential candidate from the requirement to designate a principal campaign committee provided he or she is the nominee of a political party. This implies that such a candidate not nominated by party would not be exempt from the filing requirement. The point is made explicit in the House report discussing section 432(e)(1). It explains "[a]n individual who has been nominated for the Office of Vice President by a political party does not have to designate a principal campaign committee." H.R. No 96-422, 96 Cong., 1st Sess. at 12 (1979).^{2/} Similarly, section 434(a)(10) requires that the treasurer of a committee supporting a candidate for the office of Vice President (other than the nominee of a political party) shall file reports in the same manner as a candidate for the office of President. 2 U.S.C. 434(a)(10).

Applying these provisions to the first and second questions, the Commission concludes that once Mr. Bevel becomes a candidate, he is required both to designate a principal campaign committee and to file a Statement of Candidacy. The Commission notes that Mr. Bevel does not expect to be the nominee of a political party; therefore, he cannot rely on the exception found in section 432(e)(1). The Act and Commission regulations do not provide for an exception that would nullify the obligation of Vice Presidential candidates to file Statements of Candidacy. Further, the provision excepting a Vice Presidential candidate from the duty to file reports is expressly limited to Vice Presidential candidates who are the nominees of political parties. Therefore, when Mr. Bevel becomes a candidate under the Act, his requirements will be the same as any other Federal candidate. He will be required to file a Statement of Candidacy and to designate a principal campaign committee that must file reports with the Commission.

Regarding Mr. Bevel's choice of a principal campaign committee, the Act provides that no political committee which supports, or has supported, more than one candidate may be designated as an authorized committee or a principal campaign committee. An exception, not

applicable here, does allow a candidate for the office of President nominated by a political party to designate the national committee of such political party as his principal campaign committee. See 2 U.S.C. 432(e)(3).^{3/} Again, neither the Act or Commission regulations provide an exception in section 432(e)(3) for the Vice Presidential candidate who is not the nominee of a political party but nonetheless linked to a Presidential candidate. Therefore, in response to your third question, the same committee designated by Mr. LaRouche may not be designated by Mr. Bevel as his principal campaign committee or as an authorized committee.

The fact that Mr. Bevel must designate his own separate principal campaign committee does not preclude joint campaign activity with his Presidential running mate. However, all contributions, receipts, expenditures, and disbursements pertaining to each candidate must be reported by the committee accepting any receipt or making any disbursement. See 11 CFR 110.8(d)(3).^{4/}

The special circumstances presented here, where neither candidate is the nominee of a political party, also raise the issue whether Mr. Bevel's campaign committee and Mr. LaRouche's have separate contribution limits. Under 2 U.S.C. 441a(a)(7)(C), contributions to a candidate for Vice President are also considered to be contributions to the presidential candidate who has been nominated by the same political party. See 11 CFR 110.8(f) [expenditures on behalf of candidate nominated by political party for the office of Vice President are attributed to the same party's nominee for President].

Although your request states that Mr. Bevel and Mr. LaRouche are seeking election as independents and will not be nominated by any political party, they are nevertheless running as a unified ticket on the same ballot line. Any voter who decides to vote for Mr. LaRouche will also, of necessity, vote for Mr. Bevel. Furthermore, for contribution limit purposes, Commission regulations treat independent candidates the same as those who first seek nomination by a political party and then qualify as candidates in the general election. 11 CFR 100.2(c)(4) [independent candidate may designate "primary election" date by selecting either one of two permissible dates]; see Advisory Opinions 1975-44 and 1975-53 [independent and minor party candidates who participate in general election also allowed separate contribution limit for "primary election"].

Given the longstanding Commission policy on contribution limits for independent candidates, together with the ballot unity and the combined campaigns of Mr. Bevel and Mr. LaRouche, the Commission concludes in this case that, for purposes of the Act's contribution limits, their respective principal campaign committees (as well as any other authorized committees of either candidate) should be considered as affiliated committees. Accordingly, all contributions received by any authorized committee of either candidate are considered as received by both candidates. 11 CFR 110.3(a)(1)(i). In addition, each principal campaign committee must identify the other as an affiliated committee on its Statement of Organization filed with the Commission. 11 CFR 102.2(a)(1)(ii), 102.2(b)(1)(i).

This response constitutes an advisory opinion concerning the 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
Vice-Chairman for the Federal Election Commission

Enclosures (AOs 1975-53 and 1975-44)

ENDNOTES

1/ For purposes of Chapter 95 of title 26, United States Code, and Commission regulations at 11 CFR 9002.1 and 9002.2, a Vice Presidential candidate nominated by a political party and that party's Presidential nominee are viewed as conducting a unified campaign in that any authorized campaign committee of the Vice Presidential nominee is deemed to be authorized by the Presidential nominee. The same treatment is accorded to committees authorized by the Presidential nominee. This option does not reach any issues with respect to the application of Title 26 or related regulations to Mr. Bevel's Vice Presidential campaign.

2/ This same legislative history includes language indicating that a candidate for Vice President "who is seeking nomination independent of any Presidential candidate will be required to designate a principle campaign committee." This discussion is set in the context of a primary campaign within a political party. The implication is that a Vice Presidential candidate under these circumstances who is not independent of a Presidential candidate for nomination would not have to designate a principle campaign committee. However, this may not be read as excusing a Vice Presidential candidate in the general election, who is not seeking a party's nomination and has a Presidential candidate running mate, from the obligation to file separately from the Presidential running mate. The Act and regulations are explicit in limiting the filing exemptions to Vice Presidential candidates who are nominees of a political party.

3/ As noted above, there is no need for a party's nominee for Vice President to choose a principal campaign committee. However, the Vice Presidential nominee of a political party is required to use the same depository as the party's Presidential nominee. See 11 CFR 103.4.

4/ Because the Commission regards the respective principal campaign committees of Mr. Bevel and Mr. LaRouche as affiliated (see discussion hereafter), Mr. Bevel's committee may choose to conduct all its financial activity (both receipts and disbursements) through Mr. LaRouche's principle campaign committee. While reports from both principal campaign committees would still be required, the Bevel committee could file very simple reports (with -0- entries on all lines of the cover pages) if, in fact, it had no distinct receipts or disbursements of its own, but instead conducts all activities in concert with and through the LaRouche committee. Further, transfers may be freely made between these affiliated committees. However, both committees must report these transfers.