



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 13, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1993-14

Guy Dufault, Chairman
Rhode Island Democratic State Committee
1991 Smith Street No.
Providence, RI 02911

Dear Mr. Dufault:

This responds to your letter dated June 22, 1993, on behalf of the Rhode Island Democratic State Committee ("the State Committee") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to Federal preemption of Rhode Island State campaign finance laws.

The Rhode Island Democratic State Committee has a Federal Account ("the Federal Account") which has been registered with the Commission as a political committee since September 25, 1980. This account is used solely in connection with Federal elections, and receives only contributions that are in compliance with the prohibitions and limitations of the Act. The State Committee also maintains a separate non-Federal account, registered with the Rhode Island Board of Elections ("the Board"), "for use in connection with Rhode Island elections, and to pay for the non-federal portion of allocable expenses." You have received a letter from the Chairman of the Board, dated June 8, 1993, which concluded that the State Committee's Federal Account is subject to prohibitions, limitations, and reporting requirements set out in Rhode Island State law.

Rhode Island law requires that a committee must register before receiving any contributions, and must file disclosure reports regularly with the Board. Rhode Island General Laws 17-25-11 and 17-25-15. Furthermore, registered political committees are required to give to a minimum of five or more candidates. R.I.G.L. 17-25-3(j). In addition, Rhode Island political party committees may not receive contributions in excess of \$1,000 per calendar year from an individual or from a political action committee. R.I.G.L. 17-25-10.1(a).

In the letter sent by the Board, the Chairman asserted that, although a Federally registered political action committee may make a contribution directly to a Federal candidate or the candidate's authorized committee "free of any conflicting provisions of state law," the PAC may not make a contribution directly to the State Committee, even though the funds would be held in an account used solely for support of Federal candidates, unless the contribution is made subject to Rhode Island laws. The letter stated that the PAC would have to register with the Board, and comply with the limit on contributions to it from individual donors and with the requirement to contribute to five or more Rhode Island candidates.

Because of the letter, you seek an advisory opinion on three points: (1) whether Rhode Island law may limit contributions to the State Committee Federal Account to \$1,000 per calendar year; (2) whether the Federal Account, or any Federal political committee that makes a contribution to the Federal Account, is subject to the registration and reporting requirements of Rhode Island law; and (3) whether the Federal Account, or any Federal political committee that makes a contribution to the Federal Account, is required to contribute to a minimum of five Rhode Island candidates.

Before proceeding to the substance of the response as to the preemption of Rhode Island law, the Commission notes that your request includes the question of whether committees other than yours are subject to State law. Commission regulations provide that the request shall set forth a specific transaction or activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future; requests of third parties do not qualify as advisory opinion requests. 11 CFR 112.1(b). The Commission does not consider your questions about requirements placed on other committees as questions by a third party because of the direct impact on the receipt of contributions by the State Committee. If registration, reporting, and future contribution burdens are imposed upon the other committees, the State Committee will very likely not receive contributions it would otherwise receive. See, by analogy, Advisory Opinion 1984-58. (In that opinion, the Commission considered a request by a city for a determination that a non-requester presidential campaign, against which the city thought it had a monetary claim for expenses, was not precluded by the Presidential Election Campaign Fund Act from making payment on the claim. The Commission, although concluding that it could not decide whether the campaign owed the money as a matter of contract or other legal theory, determined that the campaign was not precluded by the Fund Act from making the payment.)

The Act states that its provisions and the rules prescribed thereunder, "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. 453. The House committee that drafted this provision intended "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal office and that the Federal law will be the sole authority under which such elections will be regulated." H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 10 (1974). According to the Conference Committee report on the 1974 Amendments to the Act, "Federal law occupies the field with respect to criminal sanctions relating to limitations on campaign expenditures, the sources of campaign funds used in Federal races, the conduct of Federal campaigns, and similar offenses, but does not affect the States' rights" as to other areas such as voter fraud and ballot theft. H.R. Rep. No. 93-1438, 93d Cong., 2d Sess. 69 (1974). The Conference report also states that Federal law occupies the field with respect to reporting and disclosure of political contributions to and expenditures by Federal candidates and political

committees, but does not affect state laws as to the manner of qualifying as a candidate, or the dates and places of elections. Id. at 100-101.

When the Commission promulgated regulations at 11 CFR 108.7 on the effect of the Act on state law, it stated that the regulations follow section 453 and that, specifically, Federal law supersedes state law with respect to the organization and registration of political committees supporting Federal candidates, disclosure of receipts and expenditures by Federal candidates and political committees, and the limitations on contributions and expenditures regarding Federal candidates and political committees. Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 51. 11 CFR 108.7(b). The regulations provide that the Act does not supersede state laws concerning the manner of qualification as a candidate or political party organization, dates and places of elections, voter registration, voting fraud and similar offenses, or candidates' personal financial disclosure. 11 CFR 108.7(c). The Commission explained that "[t]hese types of electoral matters are interests of the states and are not covered in the act." House Document No. 95-44, at 51.

The Commission has previously asserted the Act's preemption of state law with respect to the Federal activities of state party committees. See Advisory Opinions 1989-25 and 1978-50. Because of the Federal law's sole authority with respect to contributions and expenditures regarding political committees, the Act preempts Rhode Island law with respect to limits on contributions to the State Committee's Federal Account. Thus, the only applicable limits on contributions to the Federal Account are the limits in 2 U.S.C. 441a(a)(1)(C) and 441a(a)(2)(C) (as well as the prohibitions in the Act).

You have represented that the Federal Account is used solely in connection with Federal elections. The imposition of Rhode Island registration and reporting requirements on a committee engaged in Federal activity only would be an encroachment upon the sole authority of the Act and regulations as to these areas. The Act thus preempts Rhode Island law, and the Federal Account needs to comply only with the Federal registration and reporting requirements. The Commission cautions that the State might not be precluded from imposing some restrictions or conditions on the State Committee if the Federal Account were to engage in non-Federal election activity. See Advisory Opinion 1986-27. (The Commission, in that opinion, concluded that Alaska could require a non-Federal account of an SSF to report the original sources of funds received by the Federal account and then transferred to the non-Federal account and the fundraising expenses allocable to such transferred funds. The Commission stated that "[t]he Act does not, however, preempt state law with respect to the reporting of receipts and disbursements of funds used for non-Federal election purposes or the registration and reporting of non-Federal accounts or state committees.") See also Advisory Opinions 1990-6 and 1982-29 upholding preemption of state laws with respect to payroll deduction and charitable matching contribution plans on the condition that the plans raise funds for use in Federal elections only.

Consistent with Federal preemption as to registration and reporting, the Commission also concludes that a Federal political committee's contribution to the State Committee's Federal Account would not, by itself, permit application of Rhode Island requirements.

The Commission's response to the third part of your request is essentially the same as its response to the second part. Federal law preempts as to contributions and expenditures regarding political committees. In view of the fact that the Federal Account is involved in Federal activity only, a state law requiring contributions to a specified number of Rhode Island candidates would be preempted by the Act. Similarly, a Federal political committee's contribution to the Federal Account would not, by itself, permit application of the Rhode Island requirement.

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

Enclosures (AOs 1990-6, 1989-25, 1986-27, 1984-58, 1982-29, and 1978-50)