



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

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JANUARY 21, 1994

MEMORANDUM TO:

The Commission

THROUGH:

John C. Surina
Staff Director

FROM:

Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan M. Levin
Senior Attorney

SUBJECT:

Draft AO 1993-25

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for January 27, 1994.

Attachment

AGENDA ITEM
For Meeting of: JAN 27 1994

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3 **ADVISORY OPINION 1993-25**

4 **State Representative Robert T. Welch**
5 **Citizens for Welch**
6 **P.O. Box 472**
7 **Madison, WI 53701**

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8 **Dear Mr. Welch:**

9 **This responds to your letter dated December 20, 1993,**
10 **concerning the application of the Federal Election Campaign**
11 **Act of 1971, as amended ("the Act"), and Commission**
12 **regulations to a Wisconsin statute regulating political**
13 **contributions by lobbyists to state legislators.**

14 **You are a member of the Wisconsin legislature and a**
15 **candidate in Wisconsin for the United States Senate in the**
16 **1994 elections. You indicate that a Wisconsin statute**
17 **purports to curtail fundraising for your Senate campaign.^{1/}**
18 **Under the Wisconsin law, you may not receive contributions**
19 **from a "lobbyist" until June 1, 1994. You have received**
20 **several contributions that would be proscribed by this**

21 1/ **The state statute is as follows:**

22 **13.625 Prohibited practices. (1) No lobbyist may:**

23 **(c) Except as permitted in this subsection, make a**
24 **campaign contribution, as defined in §11.01(6), to**
25 **a partisan elective state official for the purpose**
26 **of promoting the official's election to any**
27 **national, state or local office, or to a candidate**
28 **for a partisan elective state office to be filled**
29 **at the general election or a special election, or**
30 **the official's or candidate's personal campaign**
committee. A campaign contribution to a partisan
elective state official or candidate for partisan
elective state office or his or her personal
campaign committee may be made in the year of a
candidate's election between June 1 and the day of
the general election...

3 statute, and you wish to know whether Federal law preempts
4 its application to your Federal candidacy.

5 The Act states that its provisions and the rules
6 prescribed thereunder, "supersede and preempt any provision
7 of State law with respect to election to Federal office." 2
8 U.S.C. §453. The House committee that drafted this provision
9 intended "to make certain that the Federal law is construed
10 to occupy the field with respect to elections to Federal
11 office and that the Federal law will be the sole authority
12 under which such elections will be regulated." H.R. Rep. No.
13 93-1239, 93d Cong., 2d Sess. 10 (1974). According to the
14 Conference Committee report on the 1974 Amendments to the
15 Act, "Federal law occupies the field with respect to criminal
16 sanctions relating to limitations on campaign expenditures,
17 the sources of campaign funds used in Federal races, the
18 conduct of Federal campaigns, and similar offenses, but does
19 not affect the States' rights" as to other areas such as
20 voter fraud and ballot theft. H.R. Rep. No. 93-1438, 93d
21 Cong., 2d Sess. 69 (1974). The Conference report also states
22 that Federal law occupies the field with respect to reporting
23 and disclosure of political contributions to and expenditures
24 by Federal candidates and political committees, but does not
25 affect state laws as to the manner of qualifying as a
26 candidate, or the dates and places of elections. Id. at
27 100-101.

28 The Commission issued regulations that embody the
29 explicit Congressional intent to preempt. The regulations
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3 provide, inter alia, that "Federal law supersedes State law
4 concerning the ... [1]imitation on contributions and
5 expenditures regarding Federal candidates and political
6 committees." 11 CFR 108.7(b)(3). The regulations also list
7 the types of State election laws that are "interests of the
8 state" and are not preempted, i.e., laws governing the manner
9 of qualifying as a candidate or political party organization,
10 dates and places of elections, voter registration, voting
11 fraud and similar offenses, or candidates' personal financial
12 disclosure. 11 CFR 108.7(c). Federal Election Commission
13 Regulations, Explanation and Justification, House Document
14 No. 95-44, at 51 (1977).

15 The Wisconsin provision, as applied to Federal
16 candidates, does not regulate those areas defined as
17 interests of the state. Instead, it places restrictions on
18 the time period when contributions may be made to Federal
19 candidates, an area to be regulated solely by Federal law.
20 The Act prescribes prohibitions and limitations on
21 contributions with respect to Federal candidates and
22 political committees. See 2 U.S.C. §441a, 441b, 441c, and
23 441e. The Commission has clarified how the timing of a
24 contribution determines which election limit applies, and
25 when a contribution made after an election for debt
26 retirement is impermissible.—11 CFR 110.1(b) and 110.2(b).
27 The Act and Commission regulations also address how quickly
28 contributions must be forwarded and deposited. 2 U.S.C.
29 §432(b); 11 CFR 102.8 and 103.3. The Act contains no
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3 provisions similarly limiting contributions by lobbyists to
4 Federal election campaigns. Under the broad preemptive
5 powers of the Act, only Federal law could limit the time in
6 which a lobbyist may contribute to the Federal election
7 campaign of a state legislator. See Advisory Opinions
8 1989-12 and 1988-21. See also Advisory Opinion 1992-43.

9 The Commission has concluded that the Act preempts with
10 respect to a state law prohibition on contributions by state
11 lottery contractors to a U.S. Senate candidate, a county
12 provision limiting contributions by "County Influence
13 Brokers" to the Federal campaign of member of the County
14 Board of Supervisors, and a state law prohibition on
15 contributions by lobbyists to the Federal campaign of an
16 elected state officer. Advisory Opinions 1989-12, 1988-21,
17 and 1978-66. The Commission has also held that the Act
18 preempts state time limits for the acceptance by a state
19 legislator's Federal campaign of contributions to retire the
20 Federal campaign debt. Advisory Opinion 1992-43.

21 The Commission concludes therefore that the Wisconsin
22 provision is preempted with respect to your U.S. Senate
23 campaign, and it may accept contributions from lobbyists that
24 are otherwise lawful under the Act.
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3 This response constitutes an advisory opinion concerning
4 application of the Act, or regulations prescribed by the
5 Commission, to the specific transaction or activity set forth
6 in your request. See 2 U.S.C. §437f.

7 For the Commission,

8
9 Trevor Potter
10 Chairman

11 Enclosures (AOs 1992-43, 1989-12, 1988-21, and 1978-66)
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