



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 31, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1993-25

State Representative Robert T. Welch
Citizens for Welch
P.O. Box 472
Madison, WI 53701

Dear Mr. Welch:

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

You are a member of the Wisconsin legislature and a candidate in Wisconsin for the United States Senate in the 1994 elections. You indicate that a Wisconsin statute purports to curtail fundraising for your Senate campaign.^{1/} Under the Wisconsin law, you may not receive contributions from a "lobbyist" until June 1, 1994. You have received several contributions that would be proscribed by this statute, and you wish to know whether Federal law preempts its application to your Federal candidacy.

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.

The Commission issued regulations that embody the explicit Congressional intent to preempt. The regulations provide, inter alia, that "Federal law supersedes State law concerning the ... [l]imitation on contributions and expenditures regarding Federal candidates and political committees." 11 CFR 108.7(b)(3). The regulations also list the types of State election laws that are "interests of the state" and are not preempted, i.e., laws governing the manner of qualifying 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). Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 51 (1977).

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

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

The Commission concludes therefore that the Wisconsin provision is preempted with respect to your U.S. Senate campaign, and it may accept contributions from lobbyists that are otherwise lawful under the Act.

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.

For the Commission,

(signed)

Trevor Potter
Chairman

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

ENDNOTES

1/ The state statute is as follows:

13.625 Prohibited practices. (1) No lobbyist may:

(c) Except as permitted in this subsection, make a campaign contribution, as defined in 11.01(6), to a partisan elective state official for the purpose of promoting the official's election to any national, state or local office, or to a candidate for a partisan elective state office to be filled at the general election or a special election, or 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.