



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 18, 1994

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-5

William D. White
16 E. Manilla Avenue
Pittsburgh, PA 15220

Dear Mr. White:

This responds to your letters dated March 12 and March 2, 1994, which request an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to your status as a 1994 candidate for the United States Senate in Pennsylvania.

You state that you have publicly announced your intent to be a candidate in Pennsylvania for the 1994 U. S. Senate election cycle. Your announcement was made on or about November 5, 1993, and you filed a Statement of Candidacy (FEC Form 2) which was stamped as received by the Secretary of the Senate on December 15, 1993. With this filing you also submitted a Statement of Organization (FEC Form 1) designating your principal campaign committee under the name "Bill White for U.S. Senate." This statement identifies you as the treasurer and the chairman of the committee. It further indicates that the committee does not have any bank account or other depository account to receive, hold, and disburse committee funds.

Your request explains that you will be seeking office as an independent (no political party affiliation) in the November 1994 general election. You expect to obtain ballot access in the general election by gathering the "nominating signatures" of qualified electors on "Nomination Paper" forms prepared by Pennsylvania election officials. You expect to begin circulating these forms as soon as allowed under state law, and you believe the circulation period began on March 2, 1994. You also assert that you meet all applicable requirements of the United States Constitution with respect to qualifications for election to the office of U. S. Senator.

You request an advisory opinion from the Commission "determining if I am a legally qualified candidate for the United States Senate within the meaning of 2 U.S.C. 431(2)." You also ask

whether an opinion to this effect supersedes "any similar determination by any other State or Federal Agency, and if these other agencies are legally bound by the determination of the FEC on this matter."

The question of whether you are a candidate under the Act and Commission regulations depends upon the amount of financial activity by you or by any person, including a campaign committee, you authorize to conduct campaign activity on your behalf. When financial activity to influence your election exceeds \$5,000 in either contributions received or expenditures made, you are required to file as a Senate candidate.^{1/}

This means that you would become a candidate under the Act if you and your campaign committee, and any other person you authorize to conduct campaign activity on your behalf, receive a total amount that exceeds \$5,000 in contributions. Similarly, you would become a candidate under the Act if you, your committee, and any other person you authorize, make a combined total of over \$5,000 of expenditures to influence your election. 2 U.S.C. 431(2), 11 CFR 100.3(a).^{2/} Conversely, you are not a candidate for purposes of the Act and Commission regulations if neither your total of campaign contributions received, nor your total of campaign expenditures made, exceeds \$5,000 for the 1994 Senate election cycle.

Once you are required to file as a Senate candidate, the required filings must be made with the Secretary of the Senate, as custodian for the Commission. In addition, a copy of each document in the filing must be filed with the appropriate state office which in your State is the Bureau of Commissions, Elections and Legislation in Harrisburg, PA. The filing of the Statement of Candidacy (FEC Form 2) which designates a principal campaign committee must be made no later than 15 days after you become a Federal candidate. Within 10 days of its designation by you, the principal campaign committee must register by filing a Statement of Organization (FEC Form 1). As noted above, you have filed these documents even though you have not yet indicated that over \$5,000 of financial activity has occurred with respect to your 1994 Senate campaign.

Commission regulations explain that individuals who are not required to file as candidates under the Act may voluntarily register and file reports, but a person who does so does not become a candidate solely by voluntarily filing. 11 CFR 104.1(b). This regulation is based upon 1979 legislative history explaining the intent of Congress when it first prescribed the \$5,000 threshold for mandatory candidate filing.^{3/} Addressing the \$5,000 candidate status threshold, the report of the Committee on House Administration states:

The purpose of the change in this definition [of the term "candidate"] is to reduce the number of candidates who are required to register and report under the Act.

An individual does not become a candidate until he or she has received \$5,000 or spent \$5,000 or a person authorized by the individual receives \$5,000 or spends \$5,000 on behalf of the individual.

* * * *

It is [the] clear intent of the Committee to relieve individuals who do not meet the definition of candidate of any registration and reporting requirements under the Act even if such individuals appear on the ballot. . . . [A]pppearance on the ballot no longer creates a presumption that the individual has a registration or reporting obligation.

On the other hand, individuals who do not meet the legal definition of candidate may file reports voluntarily. The Clerk, Secretary, or Commission, as appropriate, must make any report voluntarily filed with it public. However, an individual who is voluntarily filing a report is not subject to the nonfiling provisions of this Act until he or she becomes a candidate. * * *

H. R. Rep. No. 96-422, 96th Cong., 1st Sess. 5, (1979).

As the foregoing discussion and citations indicate, the Commission does not make any determination of the type you have requested; namely, whether you are a "legally qualified candidate" for Federal office. The Act and the Commission do require that if you become a Federal candidate by virtue of receiving over \$5,000 in campaign contributions or making over \$5,000 in campaign expenditures, as more fully described above, you must file as a candidate in a timely manner and must otherwise comply with all provisions of the Act and Commission regulations.

You also ask whether Commission determinations of a person's candidacy for Federal office are binding on other State or Federal Government agencies. The Commission notes that the fact one is a candidate under the Act does not determine his or her qualifications for the election ballot in any State. Ballot access requirements are governed by State law, assuming such law comports with the requirements of the United States Constitution as interpreted and applied by the United States Supreme Court and lower Federal courts. See, for example, Munro v. Socialist Workers Party, 479 U.S. 189 (1986); Anderson v. Celebrezze, 460 U.S. 780 (1983); Lubin v. Panish, 415 U.S. 709 (1974); Jenness v. Fortson, 403 U.S. 431 (1971); Williams v. Rhodes, 393 U.S. 23 (1968). The Commission further notes that Federal preemption under 2 U.S.C. 453 does not extend to State ballot access requirements. Commission regulations provide that state laws, which prescribe the manner of qualifying as a candidate, are not preempted or superseded by the Act or Commission regulations. 11 CFR 108.7(c)(1).

You may also wish to review relevant provisions of the Communications Act of 1934, as amended, that impose certain duties on broadcast stations "to allow reasonable access to or to permit purchase of reasonable amounts of time for the [campaign] use of a broadcasting station by a legally qualified candidate" for Federal elective office. 47 U.S.C. 312(a)(7). Under some circumstances this statute also requires broadcast licensees to give "equal opportunities" for use of its station to "a legally qualified candidate" for any public office. 47 U.S.C. 315(a). These provisions are interpreted in the rulings and regulations of the Federal Communications Commission, not by the Federal Election Commission.

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

ENDNOTES

1/ For example, expenditures to influence your election would include amounts you spend from your personal funds (before you receive any contribution from any other person) to promote yourself for the general election ballot by seeking signatures on nomination petitions.

2/ Once you become a candidate under the Act, the first report required to be filed must include disclosure of all funds, including all contributions of money or other things of value, received by you or your committee or by other persons you authorized to conduct campaign activity. It must also disclose all disbursements for your campaign. 11 CFR 101.2(b), 101.3, 104.3(a), 104.3(b). Assuming you become a candidate under the Act in 1994, any receipts or disbursements made in 1993 for your Senate campaign would have to be disclosed in your first report, but should be submitted in a separate set of FEC forms filed at that time. This is because several disclosure categories require the filing of receipt and disbursement data with calendar year totals or aggregates. 11 CFR 104.3(a)(3), 104.3(a)(4), 104.3(b)(2), 104.8(b), 104.9(b).

3/ Before 1980, each Federal office candidate, who took the action necessary under State law to qualify for the ballot, was required to file with the Commission regardless of the amount of funds received or spent. 2 U.S.C. 431(b)(1) (1976).