



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 19, 1994

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-25

David K. Walter
Libertarian National Committee
1505 Cotswald Court
West Chester, PA 19382

Dear Mr. Walter:

This refers to your letters of June 13, April 26, April 15 and March 23, 1994, on behalf of the Libertarian National Committee (the "National Committee") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to procedures the National Committee wishes to use in organizing its 1996 nominating convention.

You state that the National Committee has traditionally designated individuals to take on the task of organizing, promoting and staging the biannual conventions.^{1/} This is the proposed method the National Committee wishes to adopt regarding its 1996 convention in Washington D.C. You state that the individuals that have been selected for organizing this convention wish to incorporate as a for-profit corporation, identified in your request as FEE Enterprises ("FEE"), and have reached an agreement on arrangements with the National Committee. You wish to have these arrangements reviewed to see if they meet the requirements of the FEC regulations.

FEE, you state, would charge the National Committee for the use of the convention hall for the period of time when the party was nominating and electing its Presidential and Vice Presidential candidates and for any time when the banquet room was being used for either raising funds for the Party or the candidates' committees. FEE would also be purchasing advertising space in the National Committee's monthly newspaper and renting the National Committee's mailing lists in order to promote the convention to potential attendees. Those wishing to attend would be paying fees directly to FEE.^{2/}

You state that, except as described above, no other funds would change hands between the National Committee, FEE and the candidates. FEE, should it make a profit, would owe nothing

to the National Committee. Similarly, should a loss occur, there would be no reimbursement from the National Committee or the candidates.

It is your belief that FEE would not be required to file with the FEC nor would it be required to report receipts and expenditures. The National Committee would include revenue from FEE and expenses paid to the corporation as part of its regular quarterly FEC reports.

Under the Act, the term "political committee" means any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year. 2 U.S.C. 431(4)(A). When determining whether an entity should be treated as a political committee, the standard that has been used is whether a major purpose of the organization is to make expenditures or solicit contributions for the nomination or election of candidates. See Akins v FEC, No. 92-1864 (D.D.C. March 30, 1994). Political committees are required to register and report in accordance with the requirements of the Act. 2 U.S.C. 434(a)(1). Committees commonly established, financed, maintained or controlled are affiliated and are subject to common contribution limitations. 11 CFR 100.5(g)(2).

The Act requires that each committee or other organization which represents a national party in making arrangements for the convention of such party to nominate a Presidential or Vice Presidential candidate must file a full and complete financial statement with the Commission. 2 U.S.C. 437(2). Each committee or other organization, including a national committee, which represents a national major, minor, or new political party in making arrangements for the party's convention held to nominate a Presidential or Vice Presidential candidate must register with the Commission on FEC form 1 as a political committee and file disclosure reports. 11 CFR 9008.1(b). The reporting obligation applies to all committees or organizations regardless of whether the committees or organizations use public funds to defray convention expenses. Id.

The Commission notes that FEE's only purpose, as presented in the facts of this opinion, is to organize and hold the 1996 Libertarian convention which will nominate its Presidential and Vice Presidential candidates. All of its financial activity is focused on this goal. Given the purpose of FEE, the Commission concludes that FEE would be considered a political committee for purposes of the Act and would be required to register and report as required by 2 U.S.C. 434.

The materials you have presented identify the four individuals who will form the corporation as John Famularo, Donald Ernsberger, Louise Ernsberger and David Walter. All four are Party members. Two of the four, John Famularo and Donald Ernsberger, hold or have held positions of substantial authority within the Party. Mr. Ernsberger and Mr. Famularo are both members of the National Committee itself. Mr. Ernsberger served as Party finance chair and organizer of the 1989 convention. Mr. Famularo has served as National Secretary of the Party and as a chair of the Pennsylvania Libertarian Party. The Commission notes the elements of affiliation found at 11 CFR 100.5(g)(4)(ii)(D), (E), (F), (G) and (I), and 11 CFR 110.3(a)(3)(ii)(D), (E), (F), (G) and (I), and the links in personnel between the corporation and the National Committee. These factors lead to the conclusion that FEE, as a political committee, and the National Committee are affiliated.

Given the corporation's sole purpose to make the 1996 convention arrangements, the Commission also concludes that the corporation formed by these individuals should be viewed as representing the National Committee. It would be viewed under section 437, as "a committee or other organization, which represents a national party in making arrangements for such party's convention held to nominate a candidate for the office of President or Vice President." As such, it must fulfill the obligations of section 437 to register with the Commission and file disclosure reports as required. See 11 CFR 9008.1.^{3/}

Because of the status of FEE as a political committee and its affiliation with the National Committee, the delineation of responsibilities and costs, including risk of loss between FEE and the National Committee, may be made according to the wishes of the parties. The relationship also means that these arrangements, in and of themselves, would raise no issues under section 441b.^{4/} You have stated that all charges would be at fair market value. You have specifically mentioned the rental of the hotel space for the convention. As long as all vendors provide their services and goods to the corporation and the National Committee at fair market value, no contribution to the National Committee will result. See 2 U.S.C. 431(8)(A)(i) and 11 CFR 100.7(a)(1)(iii) and Advisory Opinions 1994-22, 1988-25 and 1987-24.

Your response also indicates that the four principals in the corporation will "contribute start up capital of \$3,333 to the corporation to be created." These funds, donated for the purpose of financing and organizing the 1996 nominating convention, would be considered contributions to a committee affiliated with the National Committee and which thus shares a common limit with the National Committee. While the Libertarian National Committee, as the national committee of a political party, may accept up to \$20,000 in contributions from any individual, the donors must aggregate the donated start up capital with any other contributions they may make to the party or its affiliated committees.^{5/}

Any funds received by FEE for purposes of the convention through its fundraising efforts would also be considered contributions to the National Committee. In particular, funds raised through the sale of advertising space in the Party newsletter, if purchased by individuals or corporations through the auspices of FEE, generally would be considered contributions by those individuals and corporations and are, therefore, subject to the limitations and prohibitions of the Act.^{6/} See Advisory Opinions 1990-3 and 1978-46. Because of the prohibitions of 2 U.S.C. 441b, funds received from corporations could not be used for Federal purposes but could be placed in the nonfederal account of the National Committee and used for nonfederal purposes. See Advisory Opinion 1978-46.^{7/}

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 1994-22, 1991-32, 1991-18, 1990-3, 1988-25, 1987-24, 1983-25, 1978-46 and 1975-129)

ENDNOTES

1/ You state that this procedure has emerged out of the special needs of the Libertarian Party. As a third party, labor intensive efforts are needed to secure ballot access in as many states as possible for its candidates. You state that this leaves insufficient staff to simultaneously run and organize a national convention. You also state that the Libertarian Party wishes to avoid any financial loss that might attend an unsuccessful convention.

2/ All charges in this arrangement would be at fair market value. The hotel would charge the corporation fair market rental value for space used and the National Committee would charge normal advertising rates for space in its news letter. You state that if sufficient rooms are rented by convention attendees, the banquet hall would be provided free of charge.

3/ Indeed, the circumstances of your request closely parallel the facts of a prior enforcement case, MUR 3177. In that case, the Commission examined the arrangements made for the 1988 Libertarian Presidential nomination convention by the Libertarian National Committee. The Commission found reason to believe that the National Committee and LPWS, a corporation created to organize the convention, had violated 2 U.S.C. 437, 11 CFR 9008.1(b) and 9008.12(b) by failing to report receipts and disbursements from convention activity. In the exercise of its prosecutorial discretion, the Commission determined to take no further action against the parties in the case.

4/ The Commission in the past has examined situations which raised questions whether Federal political activity was being conducted under the guise of a business purpose. See Advisory Opinions 1991-32, 1991-18 and 1983-25. Advisory Opinion 1983-25 is somewhat relevant here. When determining whether a business corporation providing media services for a campaign could be viewed as a legitimate vendor for reporting purposes, the Commission considered several factors as relevant including whether the vendor was obligated to devote its full efforts for the contract with the political committee, whether the vendor had other clients during and after the election cycle, and whether the vendor's principals held any positions in the political committee.

Again, in this situation these factors would indicate that FEE corporation is not a true vendor since its sole purpose would be to organize the 1996 Party convention for the National Committee, it does not seem to have any other clients and, as noted above, several of its principals are National Committee members.

5/ In Advisory Opinion 1975-129, Commission determined that the Libertarian National Committee qualified as a national committee as defined by 2 U.S.C. 431(14).

6/ The Commission notes the application of 11 CFR 102.5(a)(3) to your situation. Under this section, any party committee solicitation making references to a Federal candidate or a Federal election shall be presumed to be for the purpose of influencing a Federal election and contributions resulting from that solicitation shall be subject to the prohibitions and limitations of the Act. FEE and the National Committee could refute this presumption only by demonstrating to the Commission that the funds were solicited with the express notice that they would not be used for Federal election purposes. See 11 CFR 102.5(a)(3).

7/ You state in your request that all activities involving the selection of the Party's Presidential and Vice Presidential candidates, platform approval, Party and campaign fundraising occur on one day of the six day convention. The remaining days are typically social events or business meetings not specifically related to Federal candidate election campaigns.

However an examination of the proposed convention schedule included in your request shows little difference between its program and program of major party conventions in which party events and issues are intrinsically linked to Federal campaign purposes. For example, the proposed convention program lists a scheduled debate among Presidential candidates on one of the nonfederal days. Furthermore, the major purpose of your convention would seem to be the nomination of its Presidential and Vice presidential candidate. Therefore, while your request does not contain any specific inquiry regarding possible allocation issues and the Commission takes no position regarding these issues and the feasibility of dividing the convention into Federal and nonfederal components, the Commission cautions you regarding your assertion as to the division of convention time and the possible funding issues involved.