



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 16, 1994

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-28

The Honorable Eni F. H. Faleomavaega
U.S. House of Representatives
109 Cannon Office Building
Washington, D.C. 20515

Dear Congressman Faleomavaega:

This responds to your letter dated August 4, 1994, and supplementary documents received on August 12, which request an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"), to campaign contributions by American Samoans.

Your letter states that you currently hold the office of Delegate to the House of Representatives from American Samoa. See 48 U.S.C. 1731 et seq. Documents filed with the Commission also indicate that you are currently a candidate for election to that office. Accordingly, your inquiry presents the issue of contributions to your Delegate campaign by American Samoans who are United States nationals, but not United States citizens. Your request also raises the question of whether you may contribute your personal funds to your own campaign, assuming you are a U.S. national but not a U.S. citizen.

You explain that there is no requirement in the U.S. Code that the Delegate be a United States citizen. Rather, 48 U.S.C. 1733(b) requires that the Delegate "owe allegiance to the United States" -- thus encompassing, under both Samoan and U.S. law, both U.S. citizens and U.S. nationals. See discussion below. The Delegate is elected by the people qualified to vote for the popularly elected officials of the Territory of American Samoa. 48 U.S.C. 1732. Article II, §7 of the Constitution of American Samoa requires electors to be "United States nationals." The American Samoa Code Annotated ("Am. Samoa Code Ann.") at §6.0214(a)(8) requires a person who desires to register to vote in the Territory to affirm "that the person is a U.S. citizen or a U.S. national."

The term "national of the United States" is defined at both 8 U.S.C. 1101(a)(22) and Am. Samoa Code Ann. §41.0202(1)(i) as either "(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States."^{1/} Also, 8 U.S.C. 1408(1) defines the term "nationals, but not citizens, of the United States at birth" for purposes of U.S. law to include, inter alia, "[a] person born in an outlying possession of the United States on or after the date of formal acquisition of such possession." Finally, 8 U.S.C. 1101(a)(29) defines "outlying possessions of the United States" to mean American Samoa and Swains Island.

The Act at 2 U.S.C. 441e prohibits contributions by "foreign nationals" in connection with an election to any political office, as well as the solicitation, acceptance, or receipt of any such contribution. The term "foreign national" is defined at 441e(b)(2) as:

an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined by section 1101(a)(20) of title 8 [of the United States Code].^{2/}

Section 1101(a)(20) of Title 8, U.S. Code, defines the term "lawfully admitted for permanent residence" as:

the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

Under the immigration code, this status is reserved for aliens (individuals who are neither U.S. citizens nor U.S. nationals) who satisfy various requirements as to health, morals, and economic status, and who obtain an immigrant visa. 8 U.S.C. §1181, 1201, 1202.

In contrast, U.S. nationals qualify for unrestricted entry into the United States.^{3/} Their U.S. national status means that they can be "lawfully admitted for permanent residence" in the United States at any time, without having to meet the entry requirements specified for alien immigrants. In essence, they qualify for permanent residence status without the legal obligation to apply for it, as is necessary for aliens.

The position of U.S. nationals is thus materially indistinguishable for purposes of 441e from that of permanent resident aliens, who are specifically exempted from the definition of "foreign national" at 441e(b)(2). Given this situation, the Commission concludes that American Samoan U.S. nationals who are not U.S. citizens may make otherwise lawful campaign contributions to candidates for the office of U.S. Delegate from Samoa.

To conclude that 441e bars their election campaign contributions would have the dubious effect of prohibiting American Samoan U.S. nationals from contributing to candidates for whom they are legally entitled to vote. Furthermore, the conclusion that 441e mandates "foreign national" status for American Samoans who qualify as U.S. nationals would contravene their favored status under United States immigration laws for well over 50 years. Congress should not be

presumed to have intended such a result when it fashioned the definition of "foreign national" in the 1974 Amendments to the FECA and then some four years later established the Federal office of American Samoa Delegate to the United States House of Representatives.

Your request also raises the question of whether this prohibition bars you, a U.S. national who is not a U.S. citizen, from contributing your personal funds to your own campaign. For the reasons discussed above, your use of your personal funds for your Delegate campaign is not barred by 2 U.S.C. 441e.

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)

Danny Lee McDonald
Vice Chairman

1/ While the term "person who owes permanent allegiance to the United States" is not defined in either the American Samoa Constitution or Code, this presumably refers to citizens of those islands over which the United States was granted sovereignty under the Convention of 1899, the Cession of Tutuila and Aunuu in 1900, and the Cession of the Manu'a Islands in 1904.

2/ The definition at 441e(b)(1) also includes non-citizen foreign principals under the Foreign Agents Registration Act, as that term is defined at 22 U.S.C. 611(b).

3/ In addition, U.S. nationals qualify for U.S. passports on the same basis as U.S. citizens. 22 U.S.C. 212 provides, "No passport shall be granted or issued to or verified for any other persons than those owing allegiance, whether citizens or not, to the United States."