



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 16, 1994

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-29

Robert Barra, Treasurer
Levy for Congress Committee
P.O. Box 323
Lynbrook, NY 11563

Dear Mr. Barra:

This responds to your letter dated August 26, 1994, requesting an advisory opinion on behalf of the Levy for Congress Committee ("the Committee") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a candidate seeking nomination from more than one party.

The Committee is the principal campaign committee of Congressman David Levy for re-election to the House from the Fourth District of New York. You state that, pursuant to New York's election law, Mr. Levy and another candidate were "designated" for the Republican nomination, i.e., their names appeared on the ballot for the Republican primary held on September 13, 1994. The winner of the primary will be the party nominee for the general election. Under New York law, only enrolled members of the Republican party may vote in that primary.

Mr. Levy has also been designated for nomination by the Conservative Party. Although no other candidates have been designated for nomination on the Conservative line, the Conservative Party also held a primary election on September 13 in which its enrolled members could either vote for Mr. Levy or write in the name of another candidate. You state that Mr. Levy's opponent in the Republican primary campaigned actively for write-in votes for the Conservative nomination as well.

You explain that an individual contributor and a multicandidate committee which have already contributed the legal maximum per election to Mr. Levy's primary and general election efforts have expressed interest in making additional contributions. You ask the Commission for an advisory opinion as to whether Mr. Levy may be considered a candidate in three elections for

purposes of the Act's limitations, i.e., the September 13 Republican primary, the September 13 Conservative primary, and the general election, and whether the Committee may receive the maximum legal contribution for each election. See 2 U.S.C. 441a(a)(1)(A) and (2)(A).

The Commission has previously considered the same question which was posed by a New York candidate for the U.S. Senate. Advisory Opinion 1982-47. In that situation, the candidate was seeking nomination in a contested Republican primary and was evidently unopposed in the Conservative and Right-to-Life primaries, all to be held on September 23, 1982. The opinion noted that, under Commission regulations, if no primary election is held because the candidate is unopposed, the date on which the primary would have been held is the date of the primary for purposes of the Act's contribution limitations. See 11 CFR 110.1(j)(3). The opinion also stated that the candidate should be viewed as a candidate for nomination by the Republican, Conservative, and Right-to-Life parties in the 1982 New York primaries, even though no balloting may take place for the latter two parties.

In responding to the specific question presented, the Commission stated that the nominations made by the three parties on September 23 will constitute the same primary election, and that, since the candidate was a candidate for nomination by all three parties for the same office, she could not be regarded as seeking more than one Federal office. See 11 CFR 100.2(c)(1) and 110.1(f). The Commission concluded, therefore, that only one limit would apply to contributions made for the September 23 primary election.

Your request attempts to distinguish the 1982 situation from the facts presented by you. You state that, in the 1982 opinion, the candidate's opposition in the Conservative and Right-to-Life primaries was "either anticipatory or hypothetical" and, in contrast, Mr. Levy faces active opposition in the 1994 Conservative primary. In a subsequent opinion discussing a former House candidate, the Commission stated that "[t]he fact that a candidate is unopposed in a primary election is immaterial to the application of a separate contribution limit for that primary election," and cited the 1982 opinion for support of the proposition. Advisory Opinion 1986-12. See 11 CFR 110.1(j)(2). Therefore, the degree of opposition or activity in any one party's primary does not make a difference in determining the number of contribution limits applied.

In its Explanation and Justification of Commission regulations defining the term "election," the Commission averred that the definitions are designed to be neutral as between party-affiliated and independent candidates. House Document No. 95-44, at 40 (1977). The Explanation stated that "[g]enerally, each [nominated] candidate will participate in two elections: the primary (for independents, a comparable period during which he or she may secure a position on the general election ballot) and the general election." *Id.*, at 40-41. Noting that non-major parties usually do not have actual primary elections and spend a great deal of effort to secure a ballot position, the Commission gave independent candidates and non-major party candidates the same three options (not available to major party candidates) for determining when the primary election "is considered to occur." *Id.* at 41. The point of these regulations, therefore, is to equalize treatment, as much as possible, among major party candidates, minor party candidates, and independents with respect to the availability of contribution limits. The purpose is not to expand contribution limit opportunities for major party candidates seeking more than one party's nomination.

Based on the foregoing analysis, the Commission concludes that the Committee is permitted only one limit for the primary elections on September 13, and one limit for the general election if Mr. Levy secures the nomination of any political party.

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

Enclosures (AO 1986-12 and 1982-47)