

GRAMM
'96 COMMITTEE



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FEDERAL ELECTION COMMISSION

January 5, 1995

AOR 1995-03

The Honorable Trevor Potter
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Chairman Potter:

As Treasurer to the Friends of Phil Gramm '96, the principal campaign committee for Senator Phil Gramm's 1996 reelection campaign to the United States Senate, we request this advisory opinion from the Federal Election Commission ("Commission") pursuant to 2 U.S.C. § 437f. The issue concerns the permissibility under the Federal Election Campaign Act ("Act") and the Commission's Regulations of simultaneous fundraising by a candidate for both a 1996 United States Senate campaign and a 1996 presidential campaign when such a dual candidacy is expressly permitted by the relevant state law. The Commission has previously permitted the simultaneous spending of funds by a candidate for the vice-presidency and Senate, but it does not appear that the Commission has ruled on the precise question of simultaneous fundraising. This letter seeks an advisory opinion on that issue.

Facts: The Gramm for Senate '96 Committee is the designated principal campaign committee for Senator Phil Gramm, who is a candidate for reelection to the United States Senate from Texas in 1996. It is registered with the Commission pursuant to 2 U.S.C. § 432(3)(1) and has filed and plans to continue filing pursuant to 2 U.S.C. §§ 432(f)(2), 432(g)(2) and 434(a)(1, 2). The committee has raised contributions for the 1996 Senate election and plans to continue to do so.

Phil Gramm for President Committee is a committee filed by Senator Gramm in anticipation of his seeking the 1996 Republican nomination for President of the United States. It is registered with the Commission under 2 U.S.C. § 433 and plans to file the reports required by 2 U.S.C. § 434(a)(3). The committee wishes to raise funds, as permissible under 26 U.S.C. §§ 9031 et seq., for the 1996 presidential primary.

In order to comply with the Act and the Commission's Regulations, it is Senator Gramm's intention to maintain completely separate principal campaign organizations for the two offices sought. In addition, the Gramm for Senate '96 Committee will not transfer funds in any way with the Gramm for President Committee. Similarly, there will be no funds, goods or services, including loans or loan guarantees, transferred between or used by the separate campaigns. Each committee will have its own separate staff and facilities and pay its own staff and expenses in full.

Law: Both the Act and Texas law permit an individual to maintain simultaneous candidacies for more than one federal office. Specifically, 2 U.S.C. § 441a(a)(5)(C) regulates the transfer of funds between campaign committees of individuals seeking multiple federal offices, including Presidential campaigns. In accordance with the Act, the Commission's Regulations govern situations in which an individual maintains dual candidacies for federal office. See, e.g., 11 C.F.R. § 110.8(d).

Texas law permits an individual to seek simultaneously the Presidency or vice-presidency and a seat in the United States Congress. Texas Election Code Ann. § 141.033 (Vernon 1986).

Discussion: During the 1988 election cycle, the Commission ruled explicitly that Senator Lloyd Bentsen could seek at the same time both the office of Senator from the State of Texas and the vice-presidency, and could spend funds to further both his candidacies. Statement of Reasons of the Federal Election Commission in Opposition to Motion for Stay Pending Review of Certification to Dukakis/Bentsen Committee and Supplemental Request for Emergency Relief at 9-10. Faced with a complaint that dual spending for a Senate and presidential race violated the Act, the Commission ruled that "nothing in the campaign finance statutes or regulations requires Senator Bentsen to withdraw from the Senate race or prohibits him from using private contributions to further his Senatorial campaign." Statement of Reasons at 7. The Court of Appeals upheld this decision. See Honorable Beau Boulter v. Federal Election Commission, No. 88-1541 (D.C. Cir. Aug. 3, 1988)(unpublished order); see also, Ohio State Central Committee v. Dukakis/Bentsen Committee, Matter Under Review 2666 (FEC 1988).

Since Senator Bentsen's candidacy commenced with the general election campaign in which presidential and vice presidential candidates are barred from raising funds, the case concerned only the spending of funds for dual candidacies. Senator Gramm now seeks an advisory opinion to confirm the obvious -- that the permissibility of dual candidacies and the spending of funds also must include the ability to raise funds simultaneously for dual candidacies. Federal law expressly contemplates dual candidacies and the conclusion that funds could not be simultaneously raised for both offices would run afoul of both the Act and the prerogative of the State of Texas to decide how it may choose its United States Senators.

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In conjunction with the issue of simultaneous fundraising for both candidacies, the committees also wish to confirm that individuals and multicandidate committees would have separate contribution limits for each committee under 2 U.S.C. § 441a(a)(1)(A) and (2)(A). Without permitting separate limits for the Gramm for Senate '96 Committee and the Gramm for President Committee, the ability to have dual candidacies cannot be realized. The committees acknowledge that, in order to enjoy dual candidacies and limits, there can be no transfer of funds, goods or services between the committees and that completely separate principal campaign committees and organizations must be established and maintained.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Don White", written in a cursive style.

**Don White
Treasurer**