



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

January 11, 1996

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-44

Paul E. Sullivan, Esq.  
The Singletary Mansion  
1565 The Alameda  
San Jose, California 95126

Dear Mr. Sullivan:

This responds to your letter of November 13, 1995 requesting an advisory opinion on behalf of the Forbes for President Committee, Inc. ("FPC"). Your request concerns the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations, to the Committee's receipt of contributions of \$1000 or more during the 1996 presidential primary season.

You state that FPC is the principal campaign committee of Malcolm S. Forbes, Jr., a candidate for the Republican Party nomination for President in 1996. Mr. Forbes intends to be a candidate in some or all of the primary elections to be held during the 1996 primary election season.

You ask a series of questions regarding the 48 hour notification requirement in section 431(a)(6)(A) of the Act. First, you note that several states hold caucuses rather than primary elections. You ask whether any, and if so, which, states' caucus procedures qualify as an election under 2 U.S.C. 431(1) such that 48 hour notifications would be required for contributions made with respect to that caucus. Second, if the Commission concludes that none of the caucuses qualify as an election, you seek confirmation that the New Hampshire primary scheduled for February 20, 1996 will be the first election for which FPC will be required to submit 48 hour notifications. Finally, you also seek confirmation that the 20 day period for which 48 hour notifications would be required is measured from each primary or caucus date independently, and only for those primaries or caucuses in which Mr. Forbes is a candidate.

As your letter indicates, section 434(a)(6)(A) of the Act generally requires the principal campaign committee of a candidate to notify the Clerk of the House, the Secretary of the Senate, or the Commission, as appropriate, of any contribution of \$1000 or more received after the 20th day but more than 48 hours before an election. See also 11 CFR 104.5(f). These notifications work in conjunction with the quarterly, pre-election, and post-election reports required by section 434(a)(2) to fulfill the disclosure purposes of the Act. The pre-election reports required by paragraph (a)(2)(A)(i) of that section disclose all contributions received through the 20th day before an election. The 48 hour notification requirement ensures that large contributions received after that day, but before the election, are disclosed before the election is held.<sup>1</sup>

The interpretation of the 48 hour notification requirement in the presidential primary process requires consideration of very different circumstances from its application to Congressional primary elections. Unlike nonpresidential primary elections, where it is clear to which election the notification requirement applies, the presidential primary season is made up of a series of separate primary elections. If the 48 hour notification requirement were to be interpreted to apply to presidential primary candidates, their campaign committees would have to simultaneously track overlapping 20 day notification periods for several different primary elections. At the same time, the committee would also have to attribute the contributions it receives to a particular primary election, a task that can be difficult or arbitrary given the national nature of most presidential primary campaigns. Then, the committee would have to submit notifications of contributions received with respect to a particular primary election within the 20 day period before that election. The result is that, during the presidential primary season, these committees would be required to submit 48 hour notifications on an almost continual basis.

At the same time, many presidential primary candidates do not file reports on the quarterly, pre-election, post-election schedule. Section 434(a)(3)(A) requires the principal campaign committee of a presidential primary candidate to file monthly reports if the candidate has received contributions or made expenditures aggregating \$100,000 or more on January 1 of the election year, or anticipates receiving contributions or making expenditures aggregating \$100,000 or more during the election year. This more frequent reporting schedule results in timely disclosure of contribution and expenditure activity during the presidential primary season.

Given the overall structure of the presidential primary process, including the monthly reporting requirement, the Commission concludes that the better interpretation of the Act and Commission regulations is that 48 hour notifications should not be required from the principal campaign committees of presidential primary candidates if they are required to file monthly reports.

According to reports submitted for the period ending September 30, 1995, FPC has already exceeded the \$100,000 threshold, and thus will be required to file monthly reports during the 1996 election year. Therefore, the Commission concludes that FPC will not be required to submit 48 hour notifications of contributions received while Mr. Forbes is a presidential primary candidate. Since the three questions you pose relate to when you must submit 48 hour notifications, this conclusion obviates the need to provide responses to your specific questions.

This response constitutes an advisory opinion concerning application of the Act and Commission regulations to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Lee Ann Elliott  
Chairman

1 Your letter also correctly recognizes that this notification requirement applies to loans made by a candidate to his or her campaign, since loans from individuals are generally considered contributions to the extent that they remain unpaid. See 11 CFR 100.7(a)(1)(i).