



FEDERAL ELECTION COMMISSION
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January 19, 1996

**SUBMITTED LATE
AGENDA ITEM**

For Meeting of: JAN 25 1996

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael G. Marinelli *M. Marinelli*
Staff Attorney

SUBJECT: Draft AO 1995-48

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for January 25, 1996.

Attachment

1 that the Federal law is construed to occupy the field with respect to elections to Federal
2 office and that the Federal law will be the sole authority under which such elections will
3 be regulated." H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 10 (1974).

4 According to the Conference Committee report on the 1974 Amendments to the
5 Act, "Federal law occupies the field with respect to criminal sanctions relating to
6 limitations on campaign expenditures, the sources of campaign funds used in Federal
7 races, the conduct of Federal campaigns, and similar offenses, but does not affect the
8 States' rights" as to other areas such as voter fraud and ballot theft. H.R. Rep. No. 93-
9 1438, 93d Cong., 2d Sess. 69 (1974). The Conference report also states that Federal law
10 occupies the field with respect to reporting and disclosure of political contributions to and
11 expenditures by Federal candidates and political committees, but does not affect state
12 laws as to the manner of qualifying as a candidate, or the dates and places of elections.
13 *Id.* at 100-101.

14 The Commission issued regulations that embody the explicit Congressional intent
15 to preempt. The regulations provide, *inter alia*, that "Federal law supersedes State law
16 concerning the ... [l]imitation on contributions and expenditures regarding Federal
17 candidates and political committees." 11 CFR 108.7(b)(3). The regulations also list the
18 types of State election laws that are "interests of the state" and are not preempted, *i.e.*,
19 laws governing the manner of qualifying as a candidate or political party organization,
20 dates and places of elections, voter registration, voting fraud and similar offenses, or
21 candidates' personal financial disclosure. 11 CFR 108.7(c). Federal Election
22 Commission Regulations, Explanation and Justification, House Document No. 95-44, at
23 51 (1977).

1 The Commission has also held that the Act preempts state time limits for the acceptance
2 by a state legislator's Federal campaign of contributions to retire the Federal campaign
3 debt. Advisory Opinion 1992-43.

4 The Commission concludes, therefore, that the Georgia provision is preempted
5 with respect to Mr. Day's campaign for the U.S. Senate, and the Committee may accept
6 contributions, if otherwise lawful under the Act, during the period when the Georgia state
7 legislature is in session.

8 This response constitutes an advisory opinion concerning the application of the
9 Act, or regulations prescribed by the Commission, to the specific transaction or activity
10 set forth in your request. See 2 U.S.C. §437f.

11 Sincerely,

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13
14 Lee Ann Elliott
15 Chairman
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17 Enclosures (AOs 1994-2, 1993-25, 1992-43, 1989-12, 1988-21, and 1978-66)
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