



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: The Commission
Staff Director
General Counsel
FEC Press Office
FEC Public Records

FROM: Marjorie W. Emmons/Delores Hardy *DM*
Secretary of the Commission

DATE: March 27, 1996

SUBJECT: COMMENTS: PROPOSED AO 1996-7

Transmitted herewith is a timely submitted comment from Ms. Sharon Ayres, Treasurer, on behalf of the Harry Browne for President Committee.

Proposed Advisory Opinion 1996-7. is on the agenda for Thursday, March 28, 1996.

Attachment:

2 pages

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COMMISSION
OFFICE OF GENERAL
COUNSEL
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March 26, 1996

Federal Election Commission
999 E St NW
Washington, DC 20463

To whom it may concern:

I am writing to comment on the draft of advisory opinion 1996-7 requested by our committee.

I strenuously object to your characterization of our request and your resulting conclusion. In the draft document you state in lines 2-5 of page 3 that, "You further state that the campaign's purpose would be to make a threshold submission, as outlined by the regulations, but not to accept the matching payments or become subject to the various conditions described in 26 U.S.C. 9033(a) or 11 CFR 9033.1, 9038.1 and 9038.2, including repayment requirements, agreement to an audit of the campaign, and the obligation to maintain certain documents."

This is an inaccurate representation of our intent and our request. In fact, we quite clearly stated the opposite when we said that, "Harry Browne intends to make the candidate certifications outlined in 11 CFR 9033.1 and 11 CFR 9033.2." In making those certifications Harry Browne will be promising to abide by the documentation requirements imposed on all candidates who qualify for matching funds and to submit to an audit.

It is true that we asked whether we would be exempt from the audit and other regulatory burdens, but that does not mean that we demanded that we be exempt. We are simply using the advisory opinion process to learn exactly what requirements will apply to us. Given that our committee would be the first ever to qualify for matching funds without taking them, it is entirely appropriate for us to ask such exploratory questions.

As for repayment of funds, we do not believe there is an inconsistency in Harry Browne assenting to repayment requirements even though we do not intend to repay any funds. One cannot repay funds that one never received. The wording of 11 CFR 9038.2 is clear on this point. It states that, "A candidate who has received payments from the matching payment account shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section." If Harry Browne receives no payments, then he is not subject to repayment. That does not mean that Harry Browne has failed to assent to this requirement. It means that this provision does not place any burden on him if he receives no funds.

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PHONE (714) 437-7911 * FAX (714) 438-1408

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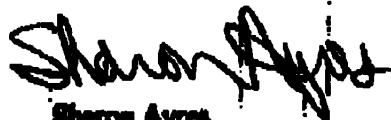
I am greatly disappointed in your response. We have asked a question of great importance to our committee and to future candidates who are ideologically opposed to accepting taxpayer support for their campaigns. Instead of providing a straightforward answer to our question, you seem to be hiding behind the excuse that under our proposal our candidate would have failed to make the necessary candidate certifications. The list of candidate certifications is lengthy and we have promised to assent to each. Nowhere on that list is there a requirement that the candidate agree to take the funds to which he is entitled, so how can our proposal be interpreted as a refusal to make the candidate certifications?

Our request is quite different. We are asking whether a candidate who makes the required candidate certifications can qualify for matching funds without accepting the funds. As we pointed out in our original request, we are experiencing discrimination because we have not been certified by the FEC as qualifying for matching funds. Your response implies that our only choices are to accept that discrimination or to violate our principles. Neither alternative is acceptable to us.

We are not asking for a free ride. Our committee would have to pay a significant amount of money to prepare a threshold submission and we would receive no funds to reimburse us for the effort. We have also indicated our willingness to abide by whatever regulations would apply. We are simply asking for a chance to participate fully in the political process without having to compromise our principles.

I urge you to carefully consider the question we have asked. Harry Browne is the first candidate in American history to qualify for matching funds without actually taking them. By refusing to take the funds, we are already at a competitive disadvantage. For you to refuse us even the opportunity of being certified as qualifying places us at an even greater disadvantage. I hope you will not set that precedent, because it would send the message that the FEC will cooperate only with candidates who are willing to take taxpayer money.

Sincerely,


Sharon Ayres
Treasurer