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FEDERAL ELECTION COMMISSION

Washington, DC 20463

April 7, 1999

MEMORANDUM

AGENDA ITEM
For Meeting of: 4-15-99

TO: The Commission

THROUGH: James A. Pehrkon
Acting Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan M. Levin
Senior Attorney

Subject: Draft AO 1999-04

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for April 15, 1999.

Attachment

1 ADVISORY OPINION 1999-4

2
3 Tony P. Trimble
4 Matthew W. Haapoja
5 Trimble & Associates
6 11700 Wayzata Boulevard
7 Minnetonka, MN 55305
8

DRAFT

9 Dear Mr. Trimble:

10
11 This responds to your letters dated February 17 and 25, 1999, on behalf of the
12 Republican Party of Minnesota ("RPM") and the Senate District 43 committee ("SD 43"),
13 requesting an advisory opinion concerning the application of the Federal Election
14 Campaign Act of 1971, as amended ("the Act"), and Commission regulations to various
15 activities of SD 43 in view of its close relationship with RPM.

16 *I. Factual Background and Questions*

17 RPM is a political committee under the Act and has been registered with the
18 Commission since August 8, 1975. It is qualified as a multicandidate committee. You
19 state that, pursuant to RPM's constitution/bylaws and Minnesota election law, RPM is the
20 State party committee of the Republican party in Minnesota. Pursuant to its
21 constitution/bylaws, RPM maintains an affiliation with the statutorily defined local party
22 organizations at the Congressional district, municipal, county, and legislative district
23 level ("the local party organizations"). Under policies adopted by its executive
24 committee, the RPM currently directs the local party organizations that all contributions
25 from such organizations to Federal candidates be aggregated for purposes of the \$5,000
26 per election limit to a candidate under 11 CFR 110.2(b)(1). You explain that RPM
27 concludes from its review of 11 CFR 110.3(b) and Advisory Opinion 1978-9 that the
28 local party organizations are not independent of each other for the purposes of such
29 limits.

30 SD 43, a local party organization, is not registered with the Commission. It
31 currently maintains one bank account, which is used for the receipt of contributions from
32 individuals, the disbursement of contributions to statewide, legislative, and local
33 candidates for Minnesota public office, and the conduct of local party-building activities.

1 SD 43's account is registered with the Minnesota Campaign Finance and Public
2 Disclosure Board as a political party committee and is subject to certain disclosure
3 requirements. You state that, pursuant to Minnesota law, the account does not accept or
4 contain funds from corporations or labor unions. SD 43 does not maintain a separate
5 Federal account and has not, to date, engaged in any Federal election activity. SD 43
6 now contemplates making Federal election contributions, or payments exempted from the
7 definition of contribution or expenditure within the meaning of 11 CFR 100.7(b)(9), in an
8 amount not to exceed \$5,000 with respect to the year 2000.

9 RPM and SD 43 wish to know whether the aggregation rules at 11 CFR
10 110.3(b)(3) and the registration requirements of 2 U.S.C. §433 apply to SD 43's proposed
11 Federal election activities. Accordingly, you ask the following questions:

- 12 (1) Assuming SD 43 does not meet the contribution or exempted payment thresholds for
13 registration under 2 U.S.C. §431(4), may SD 43 make direct contributions to Federal
14 candidates without such contributions counting against the \$5,000 multicandidate
15 committee limit on contributions by RPM to a Federal candidate, even though RPM
16 and SD 43 are not independent of each other under Commission regulations and
17 Advisory Opinion 1978-9?
18
- 19 (2) Assuming SD 43 does not meet the thresholds for registration, may SD 43 make
20 direct contributions to Federal candidates and/or exempted payments without
21 registering as a political committee? You also seek clarification as to whether the
22 registration threshold is triggered where SD 43 contributes amounts totaling less than
23 \$1,000 but its combined contributions and exempt expenditures made exceeds \$1,000.
24
- 25 (3) Must SD 43 maintain a separate Federal account for the purpose of conducting the
26 above-described activities?
27

28 *II. Legal Analysis*

29 Your request is premised upon two basic factual assumptions accepted by the
30 Commission for the purposes of this opinion, i.e., that SD 43 is not a political committee
31 as defined by the Act and that SD 43 is not independent of RPM according to 11 CFR
32 110.3(b)(3) and Advisory Opinion 1978-9, which is the principal advisory opinion
33 addressing the relationship of a State party committee to a local party committee under
34 that regulation.

1 Under the Act and Commission regulations, a local committee of a political party
2 becomes a political committee if: it receives contributions aggregating in excess of
3 \$5,000 during a calendar year; it makes payments exempted from the definition of
4 contribution under 11 CFR 100.7(b)(9), (15) and (17), and expenditure, under 11 CFR
5 100.8(b)(10), (16) and (18), which aggregate in excess of \$5,000 during a calendar year;¹
6 or it makes contributions aggregating in excess of \$1,000 or makes expenditures
7 aggregating in excess of \$1,000 during a calendar year. 2 U.S.C. §431(4)(C); 11 CFR
8 100.5(c). Within ten days after becoming a political committee, the local party
9 committee must file a statement of organization with the Commission and becomes
10 subject to the Act's reporting requirements. 2 U.S.C. §§433(a) and 434(a).

11 Under the Act, political committees "established or financed or maintained or
12 controlled" by the same persons or group of persons are treated as a single political
13 committee for the purposes of the contributions they make or receive. 2 U.S.C.
14 §441a(a)(5). Commission regulations interpret the Act and characterize such committees
15 as "affiliated committees." 11 CFR 100.5(g), 102.2(b)(1), and 110.3. Congress made a
16 specific exception to the cited general affiliation rule, which provides that the national
17 committee of a political party (along with committees established, financed, maintained,
18 or controlled by the national committee) does not share contribution limits with the State
19 committee of the same political party. 2 U.S.C. §441a(a)(5)(B); 11 CFR 110.3(b)(1)(i)
20 and (ii).

21 The Act, however, provides no specific exemption from the affiliation rules of
22 section 441a(a)(5) for political party committees at the county or other subdivisional
23 level of party organization within a State. Accordingly, Commission regulations have
24 set forth a presumption of affiliation between the political committees of a State party
25 and those of subordinate State party committees,² as follows:

¹ These subsections cover party committee activities with respect to the production and distribution of slate cards and sample ballots, campaign materials distributed by volunteers, and voter registration and get-out-the-vote drives for the presidential and vice-presidential nominees of the party.

² A subordinate committee is "any organization which is responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State or any organization under the control or direction of the State committee." 11 CFR 100.14(b).

1 All contributions made by the political committees established,
2 financed, maintained, or controlled by a State party committee and by
3 subordinate State party committees shall be presumed to be made by one
4 political committee. This presumption shall not apply if --

5
6 (i) The political committee of the party unit in question has not
7 received funds from any other political committee established, financed,
8 maintained, or controlled by any party unit; and

9
10 (ii) The political committee of the party unit in question does not make
11 its contributions in cooperation, consultation or concert with, or at the
12 request or suggestion of any other party unit or political committee
13 established, financed, maintained, or controlled by another party unit.
14

15 11 CFR 110.3(b)(3)(i)-(ii)

16 In Advisory Opinion 1978-9, the Commission analyzed the relationship of county
17 party committees to a State party committee. It concluded that the presumption of
18 affiliation was overcome by the absence of the activities described in subsections (i) and
19 (ii), and then concluded that the facts as to the relationship of the State committee and the
20 county committees indicated that they were not affiliated.

21 Although you have determined that RPM and SD 43 would not be independent of
22 each other under the regulation and the opinion, this does not necessitate the aggregation
23 of contributions made by the two committees to the same candidate or committee for the
24 purposes of the section 441a limits. In addressing the issue of aggregation in the event
25 that a county committee was "established, financed, maintained or controlled" by the
26 State committee, Advisory Opinion 1978-9, emphasizing that it was addressing party
27 committees, interpreted the Act as requiring the local party committee to be a political
28 committee in order to be subject to aggregation. This approach is further reflected in 11
29 CFR 110.3(b)(3) itself which refers to the "political committee" of the party unit in
30 question. Accordingly, RPM and SD 43 need not include SD 43's contributions to a
31 Federal candidate in determining RPM's compliance with the limit on contributions by
32 multicandidate committees at 2 U.S.C. §441a(a)(2)(A) and 11 CFR 110.2(b)(1).

33 As implied in the response to the first question, SD 43 may make direct
34 contributions to Federal candidates and/or exempted payments without registering as a

1 political committee. Contributions and exempted payments are treated separately for
2 determining whether a committee has met a registration threshold. Therefore, SD 43 may
3 contribute up to \$1,000 in a calendar year and make exempted payments up to \$5,000 in
4 that year without having to register. For example, if SD 43 made \$990 in contributions
5 and \$4,900 in exempt payments in the same calendar year, that total amount (\$5,890)
6 would not by itself trigger a registration requirement.

7 In order to make a contribution to a Federal candidate or engage in exempted
8 payment activities, however, SD 43 must comply with requirements as to the source of
9 funds used to make the contribution or payment. Although Minnesota law prohibits
10 corporate contributions to political party committees such as SD 43, it permits
11 contributions of up to \$100 from labor organizations and unlimited contributions from
12 individuals, other political committees (as defined under State law), and "political funds"
13 of an association. Minnesota Statutes §§211B.15, 10A.01(15), (16), and (17), and
14 10A.12. SD 43's single account may therefore contain funds that are not permissible for
15 use in a Federal election. Commission regulations specifically provide two options for an
16 organization that is not a political committee under the Act (including local party
17 organizations) but which decides that it will contribute to Federal candidates or
18 committees or make exempted party payments. SD 43 must either: (i) establish a
19 separate account to which only funds subject to the Act's prohibitions and limitations
20 shall be deposited and from which contributions, expenditures, and exempted payments
21 shall be made; or (ii) demonstrate through a reasonable accounting method that whenever
22 the organization makes a contribution, expenditure, or exempted payment, it has received
23 sufficient funds subject to the limitations and prohibitions of the Act to make such a
24 disbursement. 11 CFR 102.5(b)(1)(i) and (ii);³ Advisory Opinion 1982-38. The
25 Commission also notes that, if SD 43 engages in exempted party activities that involve
26 both Federal and non-Federal election activity, the portion of the payments allocable to

³ Under either method, SD 43 must keep records of the receipts and disbursements from the account and must make such records available for examination by the Commission.

1 Federal activity will count toward the \$5,000 registration threshold. See 11 CFR
2 106.5(a)(1), 106.5(a)(2)(iii), and 106.5(e).⁴

3 As the foregoing makes clear, SD 43 need not establish a separate Federal account
4 to engage in the proposed activity as long as its disbursements do not reach the thresholds
5 for becoming a political committee, or as long as it does not receive contributions in
6 excess of \$5,000 in a calendar year. If SD 43 becomes a political committee, however, it
7 must establish a Federal account, and must conduct all Federal activity from that account.
8 Only funds permissible under the limitations and prohibitions of the Act may be
9 deposited in the account. See 11 CFR 104.12 and 102.5(a).

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

13 Sincerely,

14
15
16 Scott E. Thomas
17 Chairman

18 Enclosures (AOs 1982-38 and 1978-9)
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⁴ These sections explain that organizations that are not political committees (regardless of whether they have separate Federal and non-Federal accounts) are subject to the allocation rules, that exempted party activities that involve mixed Federal/non-Federal activity are subject to allocation, and the methods for allocating such costs. Similarly, the Federal portion of allocable administrative, fundraising, and generic voter drive expenses of SD 43 would count toward the registration threshold of \$1,000 in expenditures. See 11 CFR 106.5(a)(2)(i), (ii), and (iv), and 106.5(d) and (f) (describing the allocable cost categories and how such costs should be allocated).