



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 22, 2005

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2005-10

Judith L. Corley, Esq.
Brian G. Svoboda, Esq.
Perkins Coie LLP
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

Dear Ms. Corley and Mr. Svoboda:

We are responding to your advisory opinion request on behalf of United States Representatives Howard L. Berman and John T. Doolittle, concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to fundraising activities by Representatives Berman and Doolittle for independent ballot measure committees that support or oppose initiatives on the November 8, 2005, California statewide special election ballot.

Background

The facts of this request are presented in your letter dated June 24, 2005, and in your e-mail communication dated July 15, 2005.

Representatives Berman and Doolittle are United States Representatives from California. They are also candidates for re-election to the House of Representatives in 2006 and holders of Federal office under the Act and Commission regulations. *See* 2 U.S.C. 431(2) and (3); 11 CFR 100.3 and 100.4.

A statewide special election will take place on November 8, 2005, that will present several ballot initiatives to California voters. The deadline for a ballot initiative to qualify for the special election was June 30, 2005. Neither Representative Berman nor Representative Doolittle, nor any other candidates for Federal office, will be on the November 8, 2005, ballot.

The ballot initiatives represent major issues facing the constituents of Representatives Berman and Doolittle, and touch on matters frequently before Congress. Accordingly, Representatives Berman and Doolittle would like to undertake certain activities to support or oppose certain ballot initiatives.

Specifically, Representatives Berman and Doolittle propose to raise funds for ballot measure committees that have been formed solely to support or oppose the initiatives on the November 8, 2005, ballot.¹ The ballot measure committees are not and would not be directly or indirectly established, financed, maintained or controlled by either Representative Berman or Representative Doolittle, or by anyone acting on their behalf, or by a national, State, district or local committee of a political party. Representatives Berman and Doolittle would undertake fundraising in their individual capacities, and not on behalf of any political party committee. They would not raise funds for any public communications that would refer to either of them and that would be distributed in their respective congressional districts.

Question Presented

Do the restrictions on Federal candidates and officeholders in 2 U.S.C. 441i(e)(1)(A) or (B) apply to Representatives Berman and Doolittle when they raise funds for ballot measure committees formed solely to support or oppose ballot initiatives on the California special election ballot, where the ballot measure committees are not directly or indirectly established, financed, maintained or controlled by either Representative Berman or Representative Doolittle or by anyone acting on their behalf, or by any political party committee?

Conclusion

Under the Act, as amended by the Bipartisan Campaign Reform Act of 2002, Public Law 107-155, 116 Stat. 81 (2002), Federal candidates and officeholders may not raise or spend funds in connection with an election for Federal office, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act. *See* 2 U.S.C. 441i(e)(1)(A); 11 CFR 300.61. Federal candidates and officeholders may not raise or spend funds in connection with an election other than an election for Federal office, unless the funds do not exceed the amounts permitted with respect to contributions to candidates and political committees under 2 U.S.C. 441a(a)(1), (2), and (3), and do not come from sources prohibited under the Act.² *See* 2 U.S.C. 441i(e)(1)(B); 11 CFR 300.62.

The Commission concludes that the restrictions on Federal candidates and officeholders in 2 U.S.C. 441i(e)(1)(A) and (B) do not apply to the fundraising activities of Representatives Berman and Doolittle in the circumstances that you describe.

¹ Although not directly stated in your request, the Commission assumes that the ballot measure committees are not political committees under the Act.

² Prohibited sources include corporations, labor organizations, national banks, foreign nationals, and government contractors. *See* 2 U.S.C. 441b, 441c, and 441e.

The Commission expresses no opinion regarding the application of State law or the Internal Revenue Code to the proposed activities, because those questions are not within the Commission's jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

Michael E. Toner
Vice Chairman