



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**SENSITIVE**

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
)  
Michigan Democratic State Central )  
Committee and Alan Helmkamp, )  
in his official capacity as treasurer ) MUR 5600  
John D. Dingell for Congress )  
Committee and Guy R. Martin, )  
in his official capacity as treasurer )  
Representative John D. Dingell )

**STATEMENT OF REASONS**

This matter involves a mass mailer that was disseminated prior to the 2004 general election by the Michigan Democratic State Central Committee (“MDSCC”), a registered state political party committee. The mailer promotes the election of a candidate for state office, Kathy Angerer, and was paid for from the MDSCC’s non-federal account. The mailer contains a purported quotation from Congressman John Dingell, who at the time was a Democratic candidate for re-election in the 15<sup>th</sup> Congressional District in Michigan, endorsing Ms. Angerer. The quotation reads, “Kathy Angerer has a plan for affordable health care and prescription drugs. She knows that we need to stand by our seniors and veterans.” – Congressman John Dingell.” Beneath the quotation, there is a photograph of Congressman Dingell and Kathy Angerer together. The mailer includes the following disclaimer: “Paid for by Michigan Democratic State Central Committee, 606 Townsend, Lansing MI 48933. *Not authorized by any candidate committee.*”

The complainant alleged that the mailer should have been financed, pursuant to 2 U.S.C. § 441i(b), with funds subject to the limitations, prohibitions, and reporting requirements of the Federal Election Campaign Act of 1971, as amended (the “Act”), because it constituted “Federal election activity” within the meaning of 2 U.S.C. § 431(20) and because it represented an in-kind contribution or expenditure in the form of a “coordinated communication” between the MDSCC and Congressman Dingell within the meaning of 11 C.F.R. § 109.21. The complainant also alleged that the disclaimer should have indicated it was authorized by Congressman Dingell and complied with the provisions of the Act and the regulations requiring that disclaimers “be contained in a printed box set apart from the other contents of the communication.” 2 U.S.C. § 441d(c)(2); 11 C.F.R. § 110.11(c)(2)(ii).

The Office of General Counsel recommended that the Commission find no reason to believe that the MDSCC violated 2 U.S.C. § 441i(b) by using non-federal funds to pay for the mailer or 2 U.S.C. § 434(b)(4) for failing to report the costs associated with the mailer, and find no reason to believe that Congressman Dingell and his campaign committee violated the Act or the Commission’s regulations. We agreed with those recommendations.

The mailer did not constitute “Federal election activity,” based merely on the endorsement attributed to Congressman Dingell and the picture featuring him with the state candidate. *See* Advisory Opinion 2003-25 (Weinzapfel) (endorsement of a state candidate by a clearly identified Federal candidate does not, by itself, constitute Federal election activity). The mailer was not a “coordinated communication” because affidavits provided by the MDSCC and Congressman Dingell state that neither he nor his campaign committee had any involvement with the mailer.

We rejected the Office of General Counsel's recommendations that the Commission find reason to believe that the MDSCC violated 2 U.S.C. § 441d(c)(2) for failing to place its disclaimer in a printed box set apart from the other contents of the communication, and enter into pre-probable cause conciliation with the MDSCC and Alan Helmke, in his official capacity as treasurer.

The Act requires a federally compliant disclaimer “[w]henever a political committee makes a disbursement for the purpose of financing any communication through any . . . mailing.” 2 U.S.C. § 441d(a). Since the MDSCC is a registered political committee that made disbursements for a mass mailing, the Office of General Counsel concluded that the mailing in question had to fully comply with section 441d, including the requirement that its disclaimer be placed in a printed box.

Section 441d(a) does not require state political party committees to place federally compliant disclaimers on communications that are wholly in connection with a non-federal election and are paid for with non-Federal funds from a non-Federal account. Section 441d consists of two parts. As noted above, it requires a disclaimer “[w]henever a *political committee* makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising” (emphasis added). A disclaimer is also required “whenever *any person* makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising or makes a disbursement for an electioneering communication” (emphasis added). See 2 U.S.C. § 441d(a); 11 CFR 110.11(a).

The communication at issue here contains no express advocacy of any federal candidates, does not solicit any contributions for any federal candidates, and is not an electioneering communication. The communication did not constitute Federal election activity or other Federal-related activity requiring Federal funding. Therefore, a disclaimer is required here only if a “political committee”<sup>1</sup> made a disbursement for the purpose of financing a public communication.

A state, district, or local political party committee often consists of both Federal and non-Federal components. The Federal component, which is funded with a Federal account whose activity is reported to the Commission, is a “political committee” within the scope and jurisdiction of the Act and Commission regulations. When that political committee, i.e., the Federal component of the party committee, makes disbursements for public communications, a federal disclaimer is required. However, the state regulated, non-Federal component of a state, district, or local political party organization that is funded with one or more non-Federal accounts is not a “political committee.”

Commission regulations have long reflected this view. 11 CFR 102.5(a) requires a state, district, and local party committee that finances political activity in connection with both Federal and non-Federal elections, and that qualifies as a political committee, to establish either a dedicated Federal account that is treated as a “separate Federal political committee,” or establish a political committee that receives only contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with Federal or non-Federal elections. See 11 CFR 102.5(a)(1)(i), (ii). In the latter case, “[s]uch organization shall register as a political committee and comply with the requirements of the Act.” 11 CFR 102.5(a)(1)(ii). Thus, with respect to state, district, and local party committees, only those accounts that finance, in whole or in part,

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<sup>1</sup> “Political committee” is defined at 2 U.S.C. § 431(4) and 11 CFR 100.5.

Federal election-related activity are regulated by the Commission. The regulations do not require that a state, district, or local party committee establish a dedicated non-Federal account, and there is no suggestion in the regulations that such an account qualifies as a “political committee” over which the Commission has regulatory authority.

Accordingly, the disclaimer provisions of the Act do not apply to the purely non-Federal activity conducted by a state or local political party committee’s non-Federal component and paid for with non-Federal funds, because no “political committee” has made a disbursement for a public communication. Were we to conclude otherwise, state political committees would have to comply with the often conflicting disclaimer requirements of state and federal law when advocating the election of state or local candidates solely because they had a related federal political committee.

As there were no violations of the Act or the Commission’s regulations in this matter, we voted to close the file with respect to all the respondents in MUR 5600.

6/16/06  
Date

Michael E. Toner  
Michael E. Toner  
Chairman

6/22/06  
Date

Robert D. Lenhard  
Robert D. Lenhard  
Vice-Chairman

6/9/06  
Date

David M. Mason  
David M. Mason  
Commissioner

6/30/06  
Date

Steven T. Walther  
Steven T. Walther  
Commissioner

6/15/06  
Date

June 9, 2006  
Date

Ellen L. Weintraub  
Ellen L. Weintraub  
Commissioner

Hans A. von Spakovsky  
Hans A. von Spakovsky  
Commissioner