

9 JUL 1976

AO 1976-9

Honorable James J. Delaney  
House of Representatives  
Washington, D. C. 20515

Dear Mr. Delaney:

This is in response to your letter of March 18, 1976, in which you request an opinion of counsel regarding contributions to a Federal election campaign from aliens who have green cards and are living and working in the United States.

Under 2 U.S.C. §441e (formerly 18 U.S.C. §613) political contributions by foreign nationals are prohibited. Subsections (b)(1) and (2) of §441a define foreign nationals to include:

- (1) a foreign principal, as such term is defined by section 1(b) of the Foreign Agents Registration Act of 1938 (22 U.S.C. §611(b)), except that the term "foreign national" shall not include any individual who is a citizen of the United States; or
- (2) an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. §1101(a)(20)).

Whether an alien in possession of a green card falls within the definition of "foreign national" under 2 U.S.C. §441e, and is thereby prohibited from making a political contribution, requires a determination that such alien is not in either of the categories described in subsections (b)(1) or (2) of §441e. These subsections will be discussed separately.

Subsection (b)(1) refers to "foreign principals" as that term is defined by section 1(b) of the Foreign Agents Registration Act of 1938 (22 U.S.C. §611(b)). The Foreign Agents Registration Act defines "foreign principal" to include:

1. a government of a foreign country and a foreign political party;
2. an individual affiliated or associated with, or supervised, directed, controlled, financed, or subsidized, in whole or in part, by any foreign principal defined in clause (1) of this subsection;

3. a person outside of the United States, unless it is established that such person is an individual, and is a citizen of and domiciled within the United States or that such person is not an individual, is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States, and has its principal place of business within the United States. Nothing in this clause shall limit the operation of clause (5) of this subsection;
4. a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in a foreign country;
5. a domestic partnership, association, corporation, organization, or other combination of individuals, subsidized directly or indirectly, in whole or in part, by any foreign principal defined in clause (1), (3), or (4) of this subsection;
6. a domestic partnership, association, corporation, organization, or other combination of individuals, supervised, directed, controlled, or financed, in whole or in substantial part, by any foreign government or foreign political party.

If the "green card" alien does not fall within the categories of "foreign principal" as defined above, he or she is not a foreign national for the purposes of 2 U.S.C. § 441e(b)(1). The issue remains of whether the alien is a "foreign national" within the category described in the next subsection--2 U.S.C. §441e(b)(2).

Subsection (b)(2) includes in its description of a foreign national an individual who is not lawfully admitted for permanent residence in the United States. It is the Commission's opinion that green card aliens are not foreign nationals under subsection (b)(2), since green cards are evidence of one's lawful admission to the United States for permanent residence as defined in 8 U.S.C. §1101(a)(20).

Consequently, if the alien is not a foreign national under either §441e(b)(1) or (2) the opinion of the Commission is that he or she may make otherwise lawful political contributions.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Sincerely yours,

Vernon W. Thomson  
Chairman for the  
Federal Election Commission