



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 12, 1978

AO 1978-24

Gerald J. Neely, Jr.
Attorney at Law
2525 Sixth Avenue
North Billings, Montana 59101

Dear Mr. Neely:

This refers to your letter of March 31, 1978, requesting an advisory opinion on behalf of the Sonneland for Congress Committee of the 5th District of the State of Washington ("the Committee") concerning preemption by the Federal Election Campaign Act of 1971, as amended ("the Act") of a Washington statute relating to political advertising.

You refer to 2 U.S.C. 453 which provides that the Act and regulations prescribed thereunder "supersede and pre-empt any provision of state law with respect to election to Federal office." You ask whether 453 should be interpreted to mean that a Washington statute requiring party designation on all campaign advertising¹ is superseded and preempted by the Act and Commission regulations as they pertain to the required sponsorship statements and notice of availability of campaign finance reports. See 2 U.S.C. 435(b) and 441d. See also Commission regulations of 11 CFR 102.13 and 110.11.

Neither the Act nor Commission regulations require candidates for Federal office to disclose their political party affiliation on their campaign advertising. The issue thus presented is whether the cited Washington statute is preempted and superseded by 2 U.S.C. 453 and Commission regulations at 11 CFR 108.7(b).

The supremacy clause of the Constitution requires that where there is a clear collision between State and Federal law, or a conflict between Federal law and the application of an otherwise valid State enactment, Federal law will prevail. Hamm v. City of Rock Hill, 379, U.S. 306, 311-312 (1964). It will not be presumed that a Federal statute was intended to supersede the

¹ Chapter 29.85.270 of the Washington Revised Code, 1974 states in pertinent part:

"If a candidate or candidates run for partisan political office, they and their sponsors shall also designate on all such political advertising clearly in connection with each such candidate the party to which each such candidate belongs."

exercise of a given power by a State unless there is a clear manifestation of intention to do so, since the exercise of Federal supremacy will not lightly be presumed. Schwartz v. State of Texas, 344 U.S. 199, 202-203 (1952).

It is clear that Federal law occupies the field "with respect to reporting and disclosure of political contributions to and expenditures by Federal candidates and political committees, but does not affect State law as to the manner of qualifying as a candidate, or the dates and places of election."² The House Report goes on to state that "[t]he provisions of the conference substitute make it clear that the Federal law occupies the field with respect to criminal sanctions relating to limitations on campaign expenditures, the sources of campaign funds used in Federal races, the conduct of Federal campaigns, and similar offenses, but does not affect the States' rights to prohibit false registration, voting fraud, theft of ballots, and similar offenses under State law"³ (Emphasis added)

The sponsorship statements and notices of the availability of campaign finance reports, which are required by 2 U.S.C. 435(b) and 441d to be included on the political advertising of candidates for Federal office, are an integral part of the scheme prescribed by the Act for effecting full disclosure. In light of stated Congressional intent that the Act preempt State law as to required disclosures in conducting political campaigns for Federal office, the Commission concludes that the provisions of 2 U.S.C. 435(b) and 441d (and Commission regulations cited above) would supersede and preempt the cited Washington statute requiring designation of party affiliation on all campaign advertising.

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

Sincerely yours,

(signed)

Thomas E. Harris
Chairman for the
Federal Election Commission

² House Report of the Committee on Conference on the Federal Election Campaign Act Amendments of 1974 (Report No. 93-1438, 93d Cong., 2d Sess., 100-101, 1974).

³ Ibid., at 69.