FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 12, 1978

AO 1978-25 (Part A)

Honorable Bob Packwood
Chairman National Republican Senatorial Committee
227 Massachusetts Avenue, N.E.
Washington, D.C. 20002

Dear Chairman Packwood:

This refers to your letter of April 5, 1978, requesting an advisory opinion as to whether various state party conventions and primary runoff elections would be considered separate elections for purposes of the Federal Election Campaign Act of 1971, as amended ("the Act"). You have requested that the question concerning receipt of contributions to be held in escrow for a primary runoff election be answered before your other questions, if answers to the other questions require additional preparation time.

By letter dated April 18, 1978, James F. Schoener, Counsel to the National Republican Senatorial Committee ("NRSC"), identified those Senate candidates on whose behalf your request is submitted and clarified the basis on which NRSC has standing under 2 U.S.C. 437f and Part 112 of the Commission's regulations to request an advisory opinion on the questions posed in your April 5 letter. As you recognize, the special, combined $17,500 limit on contributions made to Senate candidates by the NRSC and the Republican National Committee applies to all elections including the primary, runoff, and general elections. 2 U.S.C. 441a(h) and 11 CFR 110.2(c). Thus the number of elections for particular Senate candidates presents a factual situation involving the NRSC only to the extent it is the authorized agent of those candidates. See 11 CFR 112.1(a).

With respect to the primary runoff situation, the Commission understands that on behalf of Congressman Cochran of Mississippi and Senator Helms of North Carolina you ask whether a primary runoff election is considered a separate election for purposes of 2 U.S.C. 441a. Your question poses the issue of whether a Senate candidate who is not on the ballot in a primary runoff election may nevertheless have the benefit of a separate contribution limit with respect to a runoff election which is required between other Senate candidates opposing each other for the nomination of another political party. Assuming an affirmative answer to this issue you ask whether contributions with respect to a potential runoff election may be received and held in

escrow to be spent after the primary or returned to the contributors if no runoff occurs and the contributors would exceed 441a limits.

The contribution limits in 2 U.S.C. 441a(a) apply to contributions made "to any candidate and his authorized political committees with respect to any election for Federal office." Each limitation of 441a(a) as to a Senate candidate applies separately with respect to each election. 2 U.S.C. 441a (a)(6). The term "election" is defined in 2 U.S.C. 431(a)(1) to mean "a general, special, primary, or runoff election;". Commission regulations at 11 CFR 100.6(c) further explain that:

> "Runoff election" means the election held after a
>
> (1) Primary election, and prescribed by applicable State law as the means for deciding which candidate(s) should be certified as a nominee for the Federal office sought.

The language of the regulation indicates that the Commission regards a runoff election as the method prescribed by State law for deciding upon the candidate who should be certified as the nominee of a particular political party for Federal office in the succeeding general election. In addition, the definition of "candidate" in 2 U.S.C. 431(b) refers to an individual seeking nomination for election, or election, to Federal office. Once nominated for election to Federal office a candidate is no longer seeking nomination and therefore is not regarded as a candidate with respect to any runoff election prescribed by applicable State law to select another nominee for the same Federal office. Accordingly, contributions to such a candidate may not be made with respect to a runoff election which, as to that candidate, is obviously immaterial to his or her selection as a nominee for the general election.

In view of the foregoing conclusion, it follows that contributions to a Senate candidate who is not required to seek nomination through a runoff election may not be made or accepted with respect to a runoff election on an escrow or any other basis at any time. In this regard it is significant that Commission regulations at 11 CFR 101.2(d) provide for receiving general election contributions before the primary but do not provide for receiving runoff election contributions before the necessity of a runoff is determined. See also Commission regulations defining the phrase "with respect to any election." 11 CFR 110.1(a)(2)

An advisory opinion responding to your questions concerning whether State party conventions in Colorado and Minnesota are separate elections for purposes of 2 U.S.C. 441a will be issued in the near future.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a 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

FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 5, 1978

AO 1978-25 (Part B)

Honorable Bob Packwood
Chairman, National Republican Senatorial Committee
227 Massachusetts Avenue, N.E.
Washington, D.C. 20002

Dear Chairman Packwood:

This responds further to your request for an advisory opinion on behalf of Senate candidates in Colorado and Minnesota concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act").

Specifically, you ask whether political party conventions which involve Senate candidates in Colorado and Minnesota are separate elections for purposes of the Act with the result that those candidates would have separate contribution limits under 2 U.S.C. 441a with respect to the conventions. The Commission concludes that separate contribution limits are not available with respect to the Colorado and Minnesota conventions since they do not have authority under State law to nominate Senate candidates and thus are not separate elections under 2 U.S.C. 431(a).

The limits on contributions to candidates and their authorized committees are expressed in terms of the making of contributions with respect to an election for Federal office."[1] 2 U.S.C. 441a(a)(1) and (a)(2). Separate contribution limits for Senate candidates apply "with respect to each election." 2 U.S.C. 441a (a)(6). Thus the number of elections determines the availability of separate contribution limits under 441a.

The Act defines "election" to include "a convention or caucus of a political party which has authority to nominate a candidate." 2 U.S.C. 431(a)(2). See also Commission regulations at 11 CFR 100.6(d). The Commission has previously held that the question of whether a party

[1] As explained in Part A of this Advisory Opinion 1978-25, issued May 12, 1978, the $17,500 combined contribution limit applicable to contributions to Senate candidates by the Republican (or Democratic) Senatorial Campaign Committee and the national committee of the same political party applies to all elections and not "with respect to" each election separately. 2 U.S.C. 441a(h); see also Commission regulations at 11 CFR 110.2(c).

convention has authority to nominate a candidate must be determined from an analysis of State law pertaining to the power and role of a political party convention in the nomination of candidates for Federal office. Advisory Opinion 1976-58, copy enclosed. The Commission's review of both Colorado and Minnesota law indicates that in neither State do the party conventions have authority to nominate Senate candidates and thereby potentially obviate the need for a primary election.

Colorado statutes provide, in pertinent part, that "[a]ll nominations by political parties for candidates for United States senator . . . shall be made by primary elections." Colo. Rev. Stat. ("CRS") §49-6-2. Candidates for nomination at a primary election are placed on the primary ballot either by "certificate of designation by assembly or by petition." CRS §49-6-3. Assemblies of political parties may make designations of candidates for nomination on the primary election ballot, but no such assembly "shall declare that any one candidate has received the nomination of the assembly." CRS §49-6-4. Accordingly, the party conventions in Colorado do not have authority to nominate Senate candidates and would not be separate elections under 2 U.S.C. 431(a)(2) and 441a(a).

Minnesota statutes recognize that the affairs of each political party are under the final authority of state party conventions which are "to be held at least once every general election year at the call of the central committee." Minnesota Election Law ("MEL") §202A.12. This authority does not extend to the state nomination by party convention of Senate candidates since Minnesota law provides further that on a specified date in a general election year "an election of nominees . . . the 'primary election' shall be held in each election precinct for the selection of party...candidates for all elective offices to be filled at the general election except presidential electors." MEL §202A.21. Candidates become the nominees of their respective political parties only by receiving the highest vote in the primary election, and only the names of duly nominated candidates may be placed on the general election ballot. See MEL §§202A.41, 203A.33. Based on the foregoing provisions, the party conventions in Minnesota are not regarded as having authority to nominate a Senate candidate and would not be separate elections under 2 U.S.C. 431(a)(2) and 441a(a).

Since the Colorado and Minnesota conventions are not separate elections for purposes of the Act, your question concerning the use of an escrow arrangement by Senate candidates in those States to raise contributions for a convention and future primary election becomes moot and hypothetical. Thus, it is not appropriate for an advisory opinion. See Commission regulations at 11 CFR 112.1.

This response and the letter of May 12, 1978, designated as AO 1978-25 (Part A), constitute an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)
Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosure