FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 1, 1978

AO 1978-54

Louise Lindblom, Executive Director
The Democratic Party of Alabama
306 Jefferson Federal Building
Birmingham, Alabama 35203

Dear Ms. Lindblom:

This is in response to your letter of July 27, 1978, with enclosures, requesting an advisory opinion on behalf of the Democratic Party of Alabama concerning preemption by the Federal Election Campaign Act of 1971, as amended ("the Act") of Alabama statutes relating to the designation of political committees by candidates for Federal office.

You enclose a copy of a letter from the Attorney General of Alabama which makes reference to 2 U.S.C. 453. Additionally, you enclose a copy of a decision by the Circuit Court of Jefferson County, Alabama, dated July 26, 1978, expressing a conclusion on Federal preemption which appears contrary to the opinion of the Attorney General of Alabama. In light of these different interpretations, you ask whether the Act supersedes and preempts the requirements of Alabama Law contained in Chapter 22 of Title 17, Code of Alabama 1975, and particularly §17-22-5 and §17-22-6, with respect to candidates for Federal office.

The Act and Commission regulations prescribed thereunder supersede and preempt any conflicting or overlapping provision of State law with respect to election to Federal office. 2 U.S.C. 453. The constitutional underpinning of 453 is apparent from the supremacy clause of the Constitution which 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 exercise of a given power by a State unless there in 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 Congress intended "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal office and that the Federal law will be the

sole authority under which such elections will be regulated."[1] The Conference Committee 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"[2] (Emphasis added)

Commission regulations follow these expressions of legislative intent by explaining that the Act and regulations thereunder supersede and preempt State law with respect to: the organization and registration of political committees supporting Federal candidates, the reporting and disclosure of political contributions and expenditures to and by candidates for Federal office and political committees supporting them, and limitations on contributions and expenditures regarding Federal candidates and political committees. 11 CFR 108.7(b).

The Commission notes that the Circuit Court of Jefferson County, Alabama, decided that §17-22-5 and §17-22-6 of the Code of Alabama do not, by their terms, cover or apply to a candidate for Federal office. The Commission believes that any construction of these State statutes[3] which would make them applicable to candidates for Federal office would be without affect since Congress intended for Federal law to supersede State law with respect to the "registration of political committees supporting Federal candidates." 11 CFR 108.7(b)(1).

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)
Joan D. Aikens
Chairman for the
Federal Election Commission

[1] Report of the Committee on House Administration on the Federal Election Campaign Act amendments of 1974 (Report No. 93-1239, 93 Cong., 2d Sess. 10, 1974).
[2] Report of the Committee on Conference on the Federal Election Campaign Act Amendments of 1974 (Report No. 93-1438, 93d Cong., 2d Sess., 69, 2974). See also pages 100 and 101.
[3] The Commission notes that the Circuit Court opinion enclosed with your letter relies on Jones v. Phillips, 279 Ala. 354, 185 So.2d 378 (1966), in concluding that the requirements of 17-22-5 are not superseded or preempted by the Act. However, the Commission would point out that the Court in Jones did not consider application of the Alabama statute to a candidate for Federal office. Furthermore, Jones was decided prior to the Amendments to the Act which clearly established that the Act superceded State law as to Federal election campaigns.