



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 19, 1978

AO 1978-66

William E. Dannemeyer
Dannemeyer for Congress Committee
1105 E. Commonwealth Avenue, Suite E
Fullerton, California 93631

Dear Mr. Dannemeyer:

This is in response to your letter of August 11, 1978, requesting an advisory opinion concerning preemption by the Federal Election Campaign Act of 1971, as amended ("the Act"), of a California law which prohibits the acceptance of contributions from registered lobbyists.

Your letter states that you are presently an elected state officer in California and that you are a candidate for the United States House of Representatives. You note that California law¹ prohibits your receipt of a contribution from lobbyists registered under California law because of your position as an elected state officer. You ask whether these provisions of California law are preempted by the Act insofar as they pertain to your campaign for Federal office.

The Act and Commission regulations prescribed thereunder supersede and preempt any 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 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 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

¹ California Government Code §86202 makes it unlawful for a lobbyist to make a contribution, or to act as an agent or intermediary in the making of any contribution to a state candidate, a committee supporting a state candidate, or an elected state officer. Furthermore, §86204 makes it unlawful for those persons to "receive any contribution or gift which is made unlawful by sections 86202 or 86203."

sole authority under which such elections will be regulated."² 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."³ (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 committee supporting them, and limitations on contributions and expenditures regarding Federal candidates and political committees. 11 CFR 108.7(b). Accordingly, since the provisions of California Government Code 86204 are, in effect, limitations on contributions; the Commission concludes that these provisions are preempted by the Act insofar as they might apply to a candidate for Federal office.

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. 2 U.S.C. 437f.

Sincerely yours,

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

² 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).

³ Report of the Committee on Conference on the Federal Election Campaign Act Amendments of 1974 (Report No. 93-1433, 93 Cong., 2d Sess., 69, 1974). See also pages 100 and 101.