



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 16, 1979

AO 1978-89

Mr. Patrick J. Barton
444 Door Park Avenue
Babylon, New York 11702

Dear Mr. Barton:

This responds to your letter of October 30, 1978, requesting an advisory opinion on behalf of the Withers for Congress Committee ("the Withers Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to certain campaign materials distributed by the Islip and Babylon Town Republican Committees ("the Town Committees").

Your letter contains copies of the two publications in question. One is a pamphlet mailed to residents of the Town of Islip by the Islip Town Republican Committee entitled "The Duryea Team in Albany and Suffolk". It pictures and urges the election of the four Republican candidates for statewide office in New York as well as local Republican candidates running in Islip for state senator, county comptroller, assemblyman and court justices. Also identified is Mr. Harold Withers who ran for Congress from the Second Congressional District which includes the Town of Islip. Mr. Withers is the only candidate for Federal office named since he was the only such candidate running in Islip. The pamphlet also outlines the "Duryea Team's" views on taxes, government spending, the death penalty and jobs.

The other publication is a four page letter from the Babylon Town Republican Committee which identifies and briefly describes all the Republican candidates running for public office in the Town of Babylon, including Mr. Withers and Gregory Carman, a candidate for Congress from the Third Congressional District which encompasses a portion of Babylon. Mr. Withers and Mr. Carman were the only candidates for Federal office running in Babylon. The letter makes reference to the candidates' views on certain issues and criticizes Democratic incumbents. It also solicits contributions "to run the type of campaign that will produce the desired result... to make the candidates known and induce the people to vote and... to bring about favorable consideration for the Party's candidates." In addition, the letter solicits contributions specifically on behalf of Mr. Withers:

"You can, if you wish, contribute directly to the Withers for Congress Committee, however, the law does not permit corporate checks for Federal candidates.

In any event, whether you make your check out to the Babylon Committee or to Harry [Withers] you can be sure that you will be getting your money's worth and share in the benefits of good government."

You indicate that both the Town of Islip and the Town of Babylon Republican Committees have expressed their desire to bear the costs of these publications, including reproduction, labeling and mailing. You state that neither committee has a separate Federal account and that New York law permits corporate contributions to political committees. You ask, therefore, whether the documents in question fall within the "slate card" or any other exemption under the Act or whether the Withers for Congress Committee should pay the Town Committees for a proportionate share of the costs incurred in preparing and mailing the documents in order to avoid the acceptance of impermissible in-kind contributions.

As you recognize in your request, the Act specifically exempts from the definitions of "contribution" and "expenditure" any payments made by the State and local committees of a political party for costs incurred to prepare, display, mail or otherwise distribute a printed slate card, sample ballot or "other printed listing" which includes at least three candidates for any public office who are to be elected in the relevant state. See 2 U.S.C. 431(e)(5)(E) and 431(f)(4)(G); See also 11 CFR 100.4(b)(7) and 100.7(b)(11).

The Commission has previously considered the nature of the so-called "slate card exemption" and has concluded that it permits State and local party committees to finance any "other printed listing" which is limited to information identifying the candidates by name or by means of a picture, the office or position currently held by the candidate, the elective office being sought, party affiliation, and voting information, such as time and place of election and instructions on the method for voting a straight party ticket. The slate card exemption is not intended as a device for party committees to circumvent the reporting provisions and the limitations on contributions and expenditures of the Act by undertaking extensive campaigning on behalf of the candidates.¹ Rather, the purpose of this exemption is to allow State and local parties "to educate the general public as to the identity of the candidates of the party."² Including biographical information, other than that specifically mentioned above, would not be permissible under the described exemption, nor would material on the candidates' positions on the issues or statements of party philosophy. (See Advisory Opinion 1978-9, and response to Opinion Request #715, copies enclosed.)

Based upon the foregoing, the Commission concludes that neither of the publications referred to in your request falls within the slate card exemption in that (1) they contain biographical information on the candidates other than that allowed under the exemption, (2) they outline the candidates' positions on specific issues, and (3) they include statements of party philosophy. The Babylon Committee's letter also solicits contributions on behalf of the named candidates which is clearly not permitted under the slate card exemption. Payments for the costs

¹ See statement of Congressman Frenzel, 120 Cong. Record, H 10334 (daily ed. October 10, 1974).

² H. Cong. Rept. 1438, 93d Cong., 2d Sess., p. 65 (1974).

of the publications by the Town Committees would therefore be considered in-kind contributions to the Withers for Congress Committee, since (i) Commission regulations preclude the Town Committees from making independent expenditures in connection with the general election campaign of a candidate for Federal office, 11 CFR 110.7(b)(4), and (ii) it does not appear that the expenditures for the publications were made by the Town committees pursuant to 2 U.S.C. 441a(d) and 11 CFR 110.7(c). In this regard, the Commission further determined during its consideration of a response to your request that other action may be necessary in view of the facts presented therein. Accordingly, the Commission will be in contact with you and the other parties concerned in separate correspondence.

This response constitutes an advisory opinion concerning 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)
Robert O. Tiernan
Vice Chairman for the
Federal Election Commission

Enclosures