



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

December 21, 1979

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-71

Henry L. Smith, Jr.  
El Paso Company  
2727 Allen Parkway  
P.O. Box 2185  
Houston, Texas 77001

Dear Mr. Smith:

This responds to your letter of November 27, 1979, which requests an advisory opinion on behalf of PASPAC, a political action committee sponsored by the El Paso Company, concerning the reporting obligations of PASPAC pursuant to the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations.

Your letter explains that in February and April (1979) PASPAC made contributions to a 1980 presidential candidate. PASPAC does not presently contemplate making additional contributions to this candidate. You understand that Commission regulations at 11 CFR 104.4(b)(5) (iii) require PASPAC to file pre-election and post-election reports "only for the first election involving the [presidential] candidate, i.e. not for all of the primaries or caucuses."

You ask whether a state caucus involving the presidential candidate who received the 1979 PASPAC contributions is the only "election" for which PASPAC must file pre-election and post-election reports as regards that candidate, assuming it does not make any additional contributions to that candidate. In posing this question, you indicate uncertainty as to whether PASPAC would have reporting obligations in connection with the January 1980 presidential caucuses in Iowa. The issue thus posed by your request is narrowly limited to the dates on which PASPAC must file reports pursuant to the Act and regulations.

In response to your question, the Commission concludes that PASPAC would not have any further reporting obligations with respect to these February and April (1979) contributions

since they have already been reported.<sup>1</sup> Generally, PASPAC is required to file reports with respect to a State caucus involving any presidential candidate to whom it made contributions only if the State caucus was an "election" as defined in the Act and Commission regulations.<sup>2</sup> If the caucus is an "election," the pre-primary and post-primary reporting obligation would only exist with respect to the State caucus that was the primary election next occurring after the date of the PASPAC contributions. 11 CFR 104.4(b)(5). Even then, a report would not be necessary if the contribution had been disclosed in a report previously filed by PASPAC. Of course, PASPAC must file the year end report by January 31, 1980, quarterly reports (April 10, July 10, and October 10), as well as pre- and post-general election reports. 2 U.S.C. 434(a), 11 CFR 104.4.

The foregoing conclusion is based upon the definition of "election" in the Act and regulations since PASPAC's obligation to file reports 10 days before and 30 days after an election depends upon whether an "election" occurs. The Act defines "election" to mean:

- (1) a general, special, primary, or runoff election;
- (2) a convention or caucus of a political party which has authority to nominate a candidate;
- (3) a primary election held for the selection of delegates to a national nominating convention of a political party; and
- (4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President.  
2 U.S.C. 431(a)

Commission regulations explain that a primary election is one of the specific types of elections which is included within the definition. 11 CFR 100.6(b). A caucus or convention of a political party is an election only if it "has authority to select a nominee". 11 CFR 100.6(d); also see Advisory Opinions 1978-30 and 1978-25, copies enclosed. A local precinct, county or state caucus whose authority is limited to selecting delegates to a national nominating convention of a political party would not be an election since only the national convention has the authority to select a presidential nominee.

A Presidential primary election would be an "election" for purposes of 2 U.S.C. 431(a) and Commission regulations at 11 CFR 100.6(b) if, pursuant to State law, it is a primary election for the expression of a preference by official ballot for a Presidential candidate. Similarly, such a primary would be an "election" if, pursuant to State law, the primary requires a popular vote using an official ballot which lists the names of persons seeking selection as delegates to a

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<sup>1</sup> By Commission decision of July 26, 1979, Agenda Document #79-208, political committees that are not candidate authorized committees do not have to file 10 day pre-election reports if their contributions to a candidate who is seeking nomination (or election) in the subject election were included in a report previously filed for an earlier reporting period.

<sup>2</sup> PASPAC could request monthly filing status and thereby avoid filing any pre-primary and post-primary reports. 2 U.S.C. 434(a)(3), 11 CFR 104.4(f).

national nominating convention of a political party. See Advisory Opinion 1979-43, copy enclosed. This view is implied by 11 CFR 104.4(b)(5)(iii) which refers to the listing of a presidential candidate, or a slate of authorized delegates, on an election ballot for a primary election.<sup>3</sup>

With specific reference to whether PASPAC has a reporting obligation for the January 1980 Iowa caucuses, the foregoing analysis together with an examination of Iowa statutes indicates that 10 day pre-primary and 30 day post-primary reports are not required with regard to those caucuses since they are not an "election" under the Act or Commission regulations.

Under Iowa law, the precinct caucuses in January 1980 are held to select delegates to the county conventions of the political parties. The county conventions elect delegates to the State conventions of the political parties which, in turn, transact business as required or permitted by the State parties' constitutions.<sup>4</sup> Article IX (11, 12) of the Constitution of the Republican Party of Iowa provides that the purpose of the State Convention of the Party (held in a presidential election year) is to "elect those delegates allotted Iowa to the Republican National Convention."<sup>5</sup> In addition, Iowa statutes require that a primary election be held in June of even-numbered years but also indicate that the precinct caucuses, county conventions, and State conventions are separate events from that primary election.<sup>6</sup> The official ballot for the June primary in Iowa does not include Presidential candidates seeking the nomination of a political party, nor does it include any listing of candidates for delegate to the national nominating convention of a political party.<sup>7</sup> In summary, the January 1980 Iowa caucuses are not an election under the Act; nor, for that matter, are the subsequent State party conventions, since they are separate and distinct from the official primary election under Iowa law and do not have authority to select a Presidential nominee.

The fact that the Iowa caucuses and conventions are not elections under the Act does not mean that contributions or expenditures made by PASPAC are outside the purview of the definitions in 2 U.S.C. 431(e) or (f). The "purpose of influencing" test in those definitions is clearly satisfied where, as here, the contributions were made in the general context of the presidential nomination process.

In addition, the conclusion that the Iowa caucuses and conventions are not elections as defined in the Act has no effect on the application of the contribution limits of the Act. See 2 U.S.C. 441a(a)(6). Nor does this conclusion change the application of the expenditure limits to Presidential candidates eligible for matching Federal payments. The national limit applies to expenditures in a "campaign for nomination for election to" the office of President. The State limits, in turn, apply to the "aggregate of [nomination campaign] expenditures... in any one State". 2 U.S.C. 441a(b)(1)(A). Commission regulations provide that expenditures made in a State after, but "relating to the primary election, convention, or caucus count toward that State's

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<sup>3</sup> The requirement of a popular vote via an official ballot is also apparent from 11 CFR 9033.4(b) regarding the matching fund ineligibility of presidential candidates who receive less than 10 percent of the popular votes cast by primary election ballots. 44 Fed. Reg. 20343.

<sup>4</sup> Iowa Code §43.4, §43.90, §43.97, §43.107, and §43.111

<sup>5</sup> The contributions by PASPAC were made to a presidential candidate of the Republican party.

<sup>6</sup> Iowa Code §43.7, also see §39.3-4, §43.1, §43.3, and §43.4

<sup>7</sup> Id. §43.11, §43.26; also see §43.3.

expenditure limitation." 11 CFR 110.8(c); also see 11 CFR 100.7(13). By referring specifically to a convention or caucus in a State, the cited regulation means that the State expenditure limits apply whether or not the convention or caucus is an "election" within the definitions of 2 U.S.C. 431(a) and 11 CFR 100.6(b).

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)

Robert O. Tiernan  
Chairman for the  
Federal Election Commission

Enclosures (AO 1978-30, 1978-24, 1979-43)