FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 12, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-67

Mr. Theodore L. Jones
Counsel for the Russell B. Long Committee
P.O. Box 27
Baton Rouge, Louisiana 70821

Dear Mr. Jones:

This responds to your letter of May 19, 1980 as supplemented by your letter of July 3, requesting an advisory opinion on behalf of the Russell B. Long Committee ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to two subjects: reception invitations and contributions to the Committee in the form of checks for $2,000.

According to your letter, in the course of Senator Long's campaign for reelection numerous people will host receptions honoring Senator and/or Mrs. Long. Each host or hostess will invite friends, neighbors, public officials, and constituents; generally the social or business circle of the host and/or hostess.

You explain that the principal purpose of the reception is to influence Senator Long's nomination and advocate his reelection to Federal office. Persons attending, including agents of the Committee, may solicit political support and contributions for the Senator from persons invited to the reception, although you state that such events are not fundraising receptions. Each host and hostess is appointed in writing as an agent of the Committee. All costs incurred for receptions will be paid for or reimbursed by the Committee. Thus, the Committee will pay for the cost of food, beverages and invitations.

You explain that each invitation will be (a) hand written on the individual letterhead of the host or hostess; or (b) printed commercially as a personal invitation of the host or hostess, or (c) printed commercially as an invitation from or on the letterhead of the principal campaign

committee with names of area host committee members included therein. You state that the invitation does not "expressly advocate the election or defeat of the candidate." It further appears from sample invitations which you have provided that the invitations neither expressly solicit contributions nor mention any potential solicitation at the reception.

In light of these facts you specifically ask if "the invitation is a communication and/or a solicitation which requires the disclaimer provided for in 2 U.S.C. 441d(a)(1), (2) and (3) and FEC Reg. 110.11(a)(1)(i), (ii) and (iii) to be stated on such invitation under any of the situations enumerated in (a), (b) and (c) above?"

2 U.S.C. 441d(a) provides "whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any type of general public political advertising, such communication..." shall state who authorized and paid for the communication.

In this situation you say that the invitation will not expressly advocate the election or defeat of the candidate. Moreover, from the sample invitations it appears that the invitations do not expressly nor implicitly solicit contributions to the Committee. Rather they extend an invitation by the particular host and hostess to the invitee to join them and meet Senator Long or Mrs. Long. The question then arises whether an invitation to a political reception whose purpose is to further a candidate's election, and where invitees who attend the reception may be solicited, would itself constitute a communication which solicits a contribution and thus require inclusion of the 441d(a) statement?

The Commission is of the opinion in the absence of language which either expressly advocates the election or defeat of a candidate or constitutes a contribution solicitation, that is, requests contributions or gives notice of a fundraising event or activity, a communication does not come within the scope of 441d. See AO 1977-25 (copy enclosed). It appears from your request and the sample invitations that neither express advocacy nor a solicitation is contained in the communication. Thus, as to use of the sample invitations and others which are not materially distinguishable, the Commission concludes that a 441d statement is not required on the invitations.

The second subject raised by your request concerns contributions made in the form of $2,000 checks. The request explains that Louisiana in a community property law state. It then sets forth the scenario where in the community property state Husband ("H") writes one check to the Committee for $2,000, meant to be $1,000 for himself and $1,000 for his wife ("W"). Only H signs the check. The request then asks what the result would be in each of the following situations:

(a) H and W have a joint account for the deposit of community funds and H and W each have signature authority over the total account.

(b) H and W have separate accounts and the $2,000 check in drawn on H's account or W's account, but W does not have signature authority over H's account and vice versa.

(c) The funds come from an account maintained by H only and he exercises complete control over said account. W owns no part of the account and has no signature authority thereon.

(d) W does not know of or consent to the contribution made in her name by H.

(e) H is in a partnership and H drawn the $2,000 on a partnership check. W is not a member of the partnership and has no capital account therein.

Commission regulations at 11 CFR 110.1(i)(1) provide that even in a single income family both spouses may contribute up to $1,000 to the same candidate for the same election. Moreover, according to the request Louisiana is a community property law state and earnings by the husband and wife during existence of the community constitute community property, owned one-half by the husband and one-half by the wife. However, certain Commission regulations specifically address contributions by one individual with attribution to a second.

Specifically, 11 CFR 100.7(c) states that for purposes of the definition of `contribution' in 100.7: "any contributions or payments made by a married individual shall not be attributed to that individual's spouse unless otherwise specified by that individual or by the individual's spouse. This section does not distinguish between a community property situation and common law property situation. Thus, regardless of the property law of the state where a contributor is domiciled, no attribution of a portion of a contribution will be presumed unless specified.

Further elaboration is found in Part 104 of the Commission's regulations. In particular 104.8(c) states that "absent evidence to the contrary, any contribution made by check, money order, or other written instrument shall be reported as a contribution by the last person signing the instrument prior to delivery to the candidate or committee." 104.8(d) provides, in turn, that "a contribution which represents contributions by more than one person shall indicate on the written instrument or an accompanying written statement signed by all contributors, the amount to be attributed to each contributor." Thus, for any contribution made by using one instrument to be considered a contribution by both a husband and wife, both must sign either the instrument or an accompanying writing specifying that each is a contributor and the amount to be attributed to each.

Based on these regulations the Commission, in response to the questions raised in the request, concludes that for a $2,000 check signed by H to be considered as a contribution of $1,000 by H and $1,000 by W, W must sign either the check or an accompanying writing indicating that the check represents a contribution from her and the amount of the contribution.

Specifically, situations (a)-(d) are all governed by the general rule set out in the regulations, that for any contribution to be attributed to an individual the person himself must so indicate. Absent the signature of W the entire amount must be attributed to H and vice versa if

made on a cheek signed solely by W. If this contribution were made after the primary election it would violate 2 U.S.C. 441a(a) which limits an individual's contribution to a candidate to $1,000 per election. But see 11 CFR 110.1(a)(2)(i). If, however, the contribution was made before the primary, the candidate or his authorized committee could designate that $1,000 is for the primary election and $1,000 is for the general election. See 11 CFR 102.9(e). These, of course, would be contributions by H only. If H should state that $1,000 to be attributed to W, without any indication by W, that $1,000 would constitute a contribution made in the name of another which is prohibited by 2 U.S.C. 441f.

As for situation (e), if H makes a contribution on a partnership check, the contribution is considered to be a contribution from the partnership. Moreover the partnership must instruct the Committee, in accordance with 11 CFR 110.1(e), as to how the contribution is to be attributed to the individual partners. If W is not a partner, no part of the check drawn on the partnership account is attributable to her. Since a partnership may not make contributions to the Committee in excess of $1,000 per election, unless the $2,000 is received before the primary and the candidate or committee designates $1,000 for the primary election and $1,000 for the general election, the contribution would violate 2 U.S.C. 441a(a). Of course, the amount attributed to each partner counts against their $1,000 contribution limit to the Committee. This fact must be taken into consideration when accepting a check drawn on a partnership's account. See Advisory Opinions 1975-17 and 1975-104, copies enclosed.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Max L. Friedersdorf
Chairman for the
Federal Election Commission

Enclosures (AO 1975-17, AO 1975-104, AO 1977-25)