



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 25, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-38

Thomas J. Schwarz
Counsel, The Committee to Re-Elect Senator Moynihan
130 East 40th Street
New York, New York 10016

Dear Mr. Schwarz:

This is in response to your letter dated May 12, 1982, requesting an advisory opinion on behalf of the Committee to Re-Elect Senator Moynihan ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the Committee's acceptance of contributions from various county Democratic committees in New York State.

In your request, you state that the Committee is the principal campaign committee of Senator Moynihan of New York in his campaign for re-election to the United States Senate in the general election to be held in November, 1982. The Committee wishes to accept during calendar year 1982 contributions of up to \$1,000 from various county Democratic committees in New York State. Each county Democratic committee ("County Committee") is established under the provisions of §2-104 of the Election Law of the State of New York ("New York Election Law"). Under §14-116(2) of the New York Election Law, corporations and organizations financially supported in whole or in part by corporations may make contributions and expenditures out of treasury funds, including contributions to County Committees, provided that the aggregate of such corporate contributions and expenditures does not exceed \$5,000 in a calendar year. Consequently, the treasuries of the County Committees may contain corporate funds which, pursuant to 2 U.S.C. 441b, may not be contributed to Federal candidates.

For purposes of this request, you ask the Commission to assume, but not decide, the following:

(1) No County Committee is a "political committee" as defined under the Act. Accordingly, accounting practice regarding Federal political activity by County Committees is governed by section 102.5(b) of the Commission's regulations. In addition, no County Committee has a

separate account as contemplated by 11 CFR 102.5(b)(1)(i). Therefore, Federal political activity by County Committees is subject to the provisions of 11 CFR 102.5(b)(1)(ii).¹

(2) Any transfer of funds by a County Committee to the Moynihan Committee would be made in compliance with all applicable State and local laws governing the operation of party committees, including, without limitation, §2-126 of the New York Election Law, which precludes party committees from supporting candidates in other than general elections.

(3) Each County Committee is independent of any control or direction of the New York State Democratic Committee, and therefore no County Committee is a "subordinate committee of a State committee", as such term is defined in 11 CFR 100.14(b). Accordingly, County Committees are not subject to the aggregate limitations on contributions and expenditures imposed by the affiliation rules set forth in 2 U.S.C. 441a(a) and 11 CFR 110.3(b).²

The specific question presented in our request is whether the Moynihan Committee may accept such a contribution from a County Committee, regardless of whether the treasury of the County Committee contained corporate funds at the time the contribution was made, provided that both of the following conditions are met:

(1) At the time the contribution is made, the County Committee had no actual knowledge that its treasury had insufficient funds subject to the limitations and prohibitions of the Act to make such a contribution; and

(2) By the close of the applicable reporting period under New York Election Law, the County Committee had received, in the aggregate, sufficient funds subject to the Act to make the contribution lawful, regardless of whether the County Committee actually had sufficient funds when the contribution was made.

The Commission responds in the negative. The Act prohibits corporations from making any contribution or expenditure in connection with Federal elections; candidates and political committees are likewise prohibited from accepting such corporate contributions. 2 U.S.C. 441b. Commission regulations specifically provide for the situation where an organization that is not a

¹ In your request, you state that during calendar year 1982, the County Committees would be making contributions to the Committee of up to \$1,000. The Act provides that any local committee of a political party which makes contributions aggregating in excess of \$1,000 during a calendar year is deemed to be a "political committee" under the Act. 2 U.S.C. 431(4)(C). Accordingly, the Commission assumes that a County Committee which contributes \$1,000 to the Moynihan Committee would not contribute to any other Federal candidates in calendar year 1982.

² The Commission expressly does not decide that any County Committee is independent of any direction or control of the New York State Democratic committee for purposes of the affiliation rules set forth in 2 U.S.C. 441a(a)(5) and 11 CFR 110.3(b). See Advisory Opinion 1978-9, copy enclosed.

political committee,³ and whose treasury may therefore contain funds from sources not permitted under the Act, contributes to a Federal candidate or political committee. In such a case, the organization that is not a political committee under the Act must demonstrate, through a reasonable accounting method, that whenever it makes a contribution under the Act, it has received sufficient funds subject to the limitations and prohibitions of the Act to make the contribution. 11 CFR 102.5(b)(1)(ii).⁴ See also Advisory Opinions 1980-130 and 1980-38, copies enclosed. The Commission has also made clear that a candidate who accepts contributions from unregistered organizations which are not political committees under the Act must assume responsibility for determining that the contributions originally came from permissible sources. See Commission Directive No. 19, Revised, September 12, 1980 and notices published in the FEC Record, Vol. 5, No. 3 (March 1979) and Vol. 6, No. 11 (November 1980).

Therefore, the Act does not permit the County Committees or the Moynihan Committee to disregard the contents of the County Committees' treasuries at the time a contribution is made and to determine whether, at some later date, sufficient funds exist to render the contribution permissible under the Act.⁵ Moreover, the addition of the requirement that the County Committee have no "actual knowledge" that its treasury lacks sufficient funds to cover the contribution at the time it is made does not render the proposed accounting method consistent with the Act. Application of an "actual knowledge" standard falls short of fulfilling the affirmative obligation imposed on both the contributor/non-political committee and the recipient/political committee to ascertain whether the contributor had received sufficient funds when the contribution was made. For these reasons, the Commission concludes that the proposed accounting method would not be adequate to demonstrate that a County Committee had sufficient monies subject to the limitations and prohibitions of the Act to make a particular contribution.

³ The term "political committee" is defined at 2 U.S.C. 431(4) and 11 CFR 100.5.

⁴ Alternatively, such an organization may establish a separate account into which only funds subject to the prohibitions and limitations of the Act are deposited and from which contributions, expenditures and exempted payments are made. See 11 CFR 102.5(b)(1)(i).

⁵ In this regard, the Commission notes that New York law only requires the county committees of a political party to file reports disclosing their receipts and expenditures on the 32nd and 11th days before, and the 27th day after, the election. Thereafter, a committee which has not terminated its activities need only file periodic reports on the 15th of January and July of subsequent years. See Subtitle V of the Codes, Rules and Regulations of the State of New York, §6200.2.

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)

Frank P. Reiche
Chairman for the Federal Election Commission

Enclosures (AOs 1980-130, 1980-38, and 1978-9)