FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 15, 1994

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-2

Kim Isenberg, Campaign Manager
Linda Berglin for United States Senate Volunteer Committee
P.O. Box 6124
Minneapolis, MN 55406-0124

Dear Ms. Isenberg:

This responds to your letter dated January 21, 1994, requesting an advisory opinion on behalf of the Linda Berglin for United States Senate Volunteer Committee ("the Committee") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a Minnesota statute regulating political contributions by lobbyists to the campaigns of state legislators.

Ms. Berglin is a member of the Minnesota State Senate and a candidate in Minnesota for the United States Senate in the 1994 elections. You indicate that a Minnesota statute purports to curtail fundraising for her Federal office campaign. Under the Minnesota law, a committee authorized by someone defined as a candidate for the state legislature may not receive contributions from "a registered lobbyist, political committee, or political fund during a regular session" of the state legislature.[1/]

You ask whether the State of Minnesota may require a state legislator to comply with state law restrictions intended to govern when and whom such a person can solicit for contributions to her campaign for Federal office.[2/] The situation and question you present is, in all material respects, the same as the situation and question presented in Advisory Opinion 1993-25. In that opinion, the requester asked whether the Act preempted a Wisconsin statute prohibiting contributions by lobbyists to the Federal campaign of a state legislator, except between the period of June 1 of the election year and the day of the general election. The Commission's analysis and conclusions in Advisory Opinion 1993-25 are reiterated:

The Act states that its provisions and the rules prescribed thereunder, "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. 453. The House committee that drafted this provision 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 sole authority under which such elections will be regulated." H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 10 (1974). According to the Conference Committee report on the 1974 Amendments to the Act, "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" as to other areas such as voter fraud and ballot theft. H.R. Rep. No. 93-1438, 93d Cong., 2d Sess. 69 (1974). The Conference report also states that Federal law occupies the field with respect to reporting and disclosure of political contributions to and expenditures by Federal candidates and political committees, but does not affect state laws as to the manner of qualifying as a candidate, or the dates and places of elections. Id. at 100-101.

The Commission issued regulations that embody the explicit Congressional intent to preempt. The regulations provide, inter alia, that "Federal law supersedes State law concerning the ... [l]imitation on contributions and expenditures regarding Federal candidates and political committees." 11 CFR 108.7(b)(3). The regulations also list the types of State election laws that are "interests of the state" and are not preempted, i.e., laws governing the manner of qualifying as a candidate or political party organization, dates and places of elections, voter registration, voting fraud and similar offenses, or candidates' personal financial disclosure. 11 CFR 108.7(c). Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 51 (1977).

The [state] provision, as applied to Federal candidates, does not regulate those areas defined as interests of the state. Instead, it places restrictions on the time period when contributions may be made to Federal candidates, an area to be regulated solely by Federal law. The Act prescribes prohibitions and limitations on contributions with respect to Federal candidates and political committees. See 2 U.S.C. 441a, 441b, 441c, and 441e. The Commission has clarified how the timing of a contribution determines which election limit applies, and when a contribution made after an election for debt retirement is impermissible. 11 CFR 110.1(b) and 110.2(b). The Act and Commission regulations also address how quickly contributions must be forwarded and deposited. 2 U.S.C. 432(b); 11 CFR 102.8 and 103.3. The Act contains no provisions similarly limiting contributions by lobbyists to Federal election campaigns. Under the broad preemptive powers of the Act, only Federal law could limit the time in which a lobbyist may contribute to the Federal election campaign of a state legislator. See Advisory Opinions 1989-12 and 1988-21. See also Advisory Opinion 1992-43.

The Commission has concluded that the Act preempts with respect to a state law prohibition on contributions by state lottery contractors to a U.S. Senate candidate, a county provision limiting contributions by "County Influence Brokers" to the Federal campaign of a member of the County Board of Supervisors, and a state law prohibition on contributions by lobbyists to the Federal campaign of an elected state officer.

Advisory Opinions 1989-12, 1988-21, and 1978-66. The Commission has also held that the Act preempts state time limits for the acceptance by a state legislator's Federal campaign of contributions to retire the Federal campaign debt. Advisory Opinion 1992-43.

The Commission concludes therefore that the [state] provision is preempted with respect to your U.S. Senate campaign, and it may accept contributions from lobbyists that are otherwise lawful under the Act.

Based on the foregoing, the Commission concludes that the above-cited time restriction on contributions in Minnesota is preempted with respect to Ms. Berglin's U.S. Senate campaign. The Commission notes that this conclusion applies to the specific statutory restriction you have presented, and this opinion does not address other state restrictions not presented in your request.

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.

For the Commission,

(signed)

Danny Lee McDonald
Vice Chairman

Enclosures (AOs 1993-25, 1992-43, 1989-12, 1988-21, and 1978-66)

ENDNOTES

1/ The statute states, in pertinent part, as follows:

Minnesota Statutes 10A.065 Contributions and Solicitations During Legislative Session.

Subdivision 1. Registered lobbyist contributions; legislative session. A candidate for the legislature or for constitutional office, a candidate's principal campaign committee, any other political committee with the candidate's name or title, or any committee authorized by the candidate (emphasis added), shall not solicit or accept a contribution on behalf of the candidate's principal campaign committee, any other political committee with the candidate's name or title, or any committee authorized by the candidate, from a registered lobbyist, political committee, or political fund during a regular session of the legislature.

MS 10A.01 Definitions.

Subdivision 5. Candidate. "Candidate" means an individual who seeks nomination or election to any statewide or legislative office for which reporting is not required under federal laws... A candidate remains a candidate until the candidate's principal campaign committee is dissolved as provided in section 10A.24.

On February 22, 1994, the Minnesota Ethical Practices Board issued an opinion to another state legislator running for Federal office, stating that this prohibition would not cover the Federal candidate committee of a sitting legislator. We do not know, however, how these provisions would be interpreted by other agencies of the State of Minnesota.

2/ Your original request letter also asked whether the State of Minnesota may require a state legislator to dissolve her principal campaign committee for state office as a prerequisite to seeking contributions for her Federal candidacy. By letter dated February 17, 1994, you withdrew this question from consideration.