



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 31, 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2000-06

Gerald M. Moan, Chairman
2000 Convention Committee of the
Reform Party USA
9219 E. Shonto Lane
Tucson, Arizona 85749

Dear Mr. Moan:

This refers to your letter dated April 6, 2000, on behalf of the 2000 Convention Committee of the Reform Party of the United States of America ("the Committee") concerning the application of the Presidential Election Campaign Fund Act ("the Fund Act") and Commission regulations to the permissible uses of convention funds received from the Treasury of the United States, in connection with the Reform Party's Presidential nominating process.

FACTS

You state that you are the Chairman and Treasurer of the Committee. You explain that as a result of its 1996 presidential candidate having received more than five percent of the popular vote in the 1996 general election, the Reform Party achieved minor party status under 11 CFR 9002.7.¹ On November 23, 1999, the Commission certified \$2,468,921 for payment from the U.S. Treasury to the Reform Party for its 2000 Presidential nominating convention. At a 1998 convention of the Reform Party held in Atlanta, Georgia, the nominating procedure, which is the subject of this request, was

¹ In Advisory Opinion 1998-2, the Commission recognized the National Committee of the Reform Party USA as the national committee of a political party under Commission regulations.

adopted. Minor amendments were passed at the 1999 Reform Party convention in Dearborn, Michigan. A copy of these rules, as amended, is provided on the official web page of the Reform Party.²

You explain that the Reform Party nominating process consists of two parts: (1) qualifying for the Reform Party's presidential nominating ballot; and (2) the nomination balloting itself. A candidate qualifies by achieving eligibility to run as an independent candidate for President of the United States in enough states in which the Reform Party (or one of its affiliates) has not achieved legal ballot status so that the total electoral votes, assigned to the states where the candidate qualifies, is equal to at least one half of the total electoral votes of non-ballot status states. Nomination rules, section III (3)-(5). The nomination balloting consists of a national vote cast by members of the Reform Party or an affiliated state party and all other persons who signify their desire to participate in a Reform Party (or affiliated) organization in their state, along with all persons who sign a nominating petition for a candidate seeking to qualify. Nomination rules, section IV(2). The names of these persons will be placed in a computer data base, and they will be mailed ballots for an election to be held by telephone, mail and e-mail during the month of July 2000. Each voter may cast a vote for his or her first, second and third choices. The ballots will be tabulated by computer and the results announced at the Reform Party National Convention to be held in August, 2000. Nomination rules, section IV(5). If no candidate secures a majority, the computer will generate a second result by eliminating the candidate with the lowest number of votes and distributing the second choice votes of those who voted for the eliminated candidate to the remaining candidates. The procedure continues (using the third choice if necessary) until one candidate receives a majority. Nomination rules, section IV(9) and (10). The candidate for Vice President is chosen by convention delegates. Nomination rules, section V(5).

You ask, given this process, whether the convention funds available to the Reform Party under 26 U.S.C. §9008 may be used to finance phase two of the described process; namely, the development of a voter data base and the conduct of the balloting to choose the Reform Party presidential candidate.³ You further explain that such uses would be in addition to the expenses of organizing and conducting the August, 2000 meeting.⁴

² The Internet address for the web site is <http://www.reformparty.org/>.

³ The Commission understands the terms "development of a voter data base" and "the conduct of balloting" to be limited to the preparation and dissemination of materials needed directly for the Presidential nomination process connected to the convention.

⁴ Your request concerns the use of funds available to the Reform Party for its Presidential nominating convention under 26 U.S.C. §9008(b)(2). Therefore, this opinion does not deal with any question relating to the eligibility of Reform Party candidates to receive and use Federal matching funds under 26 U.S.C. §§9031-9042. Neither does this opinion deal with any question regarding the use of general election funding under 26 U.S.C. §§9001--9007 and 9009--9013.

FUND ACT AND COMMISSION REGULATIONS

Under 26 U.S.C. §9008(b)(2) the national committee of a minor party is entitled to Federal (or “public”) funding for its presidential nominating convention. However, no part of any payment made under section 9008 shall be used to defray the expenses of any candidate or delegate who is participating in any presidential nominating convention. 26 USC §9008(c). Such payments shall be used only to defray expenses incurred with respect to a presidential nominating convention (including the payment of deposits) by or on behalf of the national committee receiving such payments; or to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds (other than contributions to defray such expenses received by such committee) used to defray such expenses. *See* 26 U.S.C. §9008(c)(1) and (2); *see also* 11 CFR 9008.7(a)(1) and (2).

Commission regulations provide some guidance as to what expenses may qualify as convention expenses. Under 11 CFR 9008.7(a)(4), "Convention expenses" includes all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to, and for the purpose of, conducting a presidential nominating convention or convention-related activities. This regulation includes a list of convention activities or functions that are payable from public funds as permissible convention expenses, but provides that: “Such expenses include, but are not limited to” the activities so listed. *Id.* The examples provided include, among other expenses, payments for preparing, maintaining, and dismantling the physical site of the convention, including rental of the hall, platforms and seating, decorations, telephones, security, convention hall utilities, and other related costs; salaries and expenses of convention committee employees, volunteers and similar personnel, whose responsibilities involve planning, management or otherwise conducting the convention; expenses for conducting meetings of or related to committees dealing with the conduct and operation of the convention, such as rules, credentials, platform, site, contests, call, arrangements and permanent organization committees, including printing materials and rental costs for meeting space; and administrative and office expenses for conducting the convention, including stationery, office supplies, office machines, and telephone charges; but excluded from these expenses are the cost of any services supplied by the national committee at its headquarters or principal office if such services are incidental to the convention and not utilized primarily for the convention. 11 CFR 9008.7(a)(4)(i),(ii),(v) and (x).

APPLICATION TO PROPOSAL

As the regulations themselves note, the list of permissible convention expenses delineated in section 9008.7(a)(4) is not meant to be exclusive. The Commission stated in the Explanation and Justification to the original regulations:

Subsection (a)(4) sets forth a list of expenses which are convention related and which may be defrayed with public funds. The list of expenses does

not, however, include all convention expenses. The national committee is thus not limited to using its public funds only for the expenses listed but may also use public funds to defray any other expense with respect to the convention.

44 *Fed. Reg.* 83036 (November 1, 1979).

Therefore, the fact that the expenses discussed in your request are not explicitly mentioned in the list discussed above does not determine whether public convention funding may be used to pay for them.

The Commission understands that the development of a voter data base and the conduct of the balloting to nominate the Reform Party presidential candidate, who will seek office in the November general election, are integral parts of the Reform Party convention process. It is through the creation of the voter data base and the balloting prior to the convention that the Presidential candidate is chosen and announced at the convention.⁵ These expenses, again, while not explicitly mentioned in section 9008.7(a)(4), could be viewed as akin to the administrative and office expenses for the conducting of the convention that are not for services merely incidental to the convention, but instead cover services “utilized primarily for the convention.” 11 CFR 9008.7(a)(4)(x).

However, the Fund Act and Commission regulations do not permit the use of public convention funding to defray the expenses of any candidate who is participating in the convention process. While you have limited your request to the use of public convention funding for the second phase of the Reform Party’s convention process, the Commission notes that payments by the Committee of the expenses of candidates, in order to attain ballot access and thus qualify for the Reform Party primary, would not be a permissible use of the public convention funding. These expenses relate to the campaigns of the individual primary candidates, not to the conducting or organizing of the convention itself.

Therefore, the Commission concludes that convention funds available to the Reform Party under 26 U.S.C. §9008, can be used to the develop a voter data base and to

⁵ The Commission notes that even if the selection of the candidate may take place prior to the convention, the convention plays an important role in the candidate selection process. Not only do the convention delegates choose the Vice Presidential candidate of the party, but under certain circumstances the convention delegates may override the result of the Presidential primary. To override the selection made by party members prior to the convention, a motion to override must be made and joined by the governing bodies of at least a majority of State delegations or by the majority of State delegations. However, once the motion is made, it must then receive the vote of two thirds of the delegates of the convention. At that point, the Presidential nominee is then chosen by majority vote of the delegates to the convention. Nomination rules, section IV(10).

conduct the balloting to choose the Reform Party presidential candidate.⁶ These uses are permitted in addition to the otherwise proper payments to organize and conduct the August, 2000 convention itself.

This response constitutes an advisory opinion concerning the application of the Fund 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,

(signed)

Darryl R. Wold
Chairman

⁶ The Commission notes that it expresses no opinion regarding the valuation or transfer, or other post convention use, of the voter data base by any party committee or candidate for purposes other than those discussed in this opinion.