



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 22, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-11

Charles H. Bell, Jr.
General Counsel
California Republican Party
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Suite 801
Sacramento, CA 95814

Lance H. Olson
General Counsel
California Democratic Party
Olson, Hagel & Fishburn, LLP
555 Capitol Mall, Suite 1425
Sacramento, CA 95814

Dear Messrs. Bell and Olson:

We are responding to your joint advisory opinion request on behalf of the California Republican Party and the California Democratic Party (collectively “California State Party Committees”). Your request concerns the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to three types of proposed communications preceding State party fundraising events that include Federal candidates or officeholders as featured speakers or honored guests. The Commission concludes that one type of proposed communications is permissible under the Act and Commission regulations, but the Commission could not approve a response by the required four affirmative votes with regard to the other two types of proposed communications.¹

¹ Three Commissioners would have found proposed communications 1 and 2 in violation of the Act while two Commissioners would have found them in compliance. See Concurring Opinion of Vice Chairman David M. Mason and Commissioner Hans A. von Spakovsky on Advisory Opinion 2007-11.

Background

The facts presented in this advisory opinion are based on your letter received on June 13, 2007 and your email received on June 26, 2007.

The California State Party Committees plan to invite Federal candidates and officeholders to be featured speakers or honored guests at various fundraising events for State, district or local party committees in California. These fundraising events would raise non-Federal funds for State, district or local party committees. The California State Party Committees plan to publicize the Federal candidates' and officeholders' appearances in pre-event communications, including mailings that "reference solicitations for non-Federal funds to be raised at the event." Specifically, the California State Party Committees propose to make the following three types of communications:

Proposed Communication 1: An invitation from the State or county party committee stating that a Federal candidate or officeholder will be the featured speaker/honored guest, which also asks for non-Federal funds (either funds exceeding the amount limitations or from prohibited sources). The reply card also references the Federal candidate or officeholder.

Proposed Communication 2: A State or county party committee invitation stating that a Federal candidate or officeholder will be the featured speaker/honored guest, but that does not solicit non-Federal funds in itself. However, the reply card sent in the same envelope would request non-Federal funds without referencing any Federal candidate or officeholder.

Proposed Communication 3: A State or county party committee "Save the Date" announcement containing the name and date of the non-Federal fundraiser that references a Federal candidate or officeholder as the featured speaker/honored guest but does not ask for any donation. The announcement would also state that more information will follow. The actual solicitation for non-Federal funds would be made in a separate mailing that identifies the fundraising event and the date but does not make any reference to a Federal candidate or officeholder.

For each of these proposed communications, the California State Party Committees will consult with the Federal candidate or officeholder before sending the communication to obtain the Federal candidate's or officeholder's comments on, and approval of, the communication's language and form.

Question Presented

Are each of the three types of proposed communications publicizing a Federal candidate's or officeholder's appearance as a speaker or guest at fundraising events for California State, district or local party committees permissible under 2 U.S.C. 441i(e) and 11 CFR 300.64?

Legal Analysis and Conclusions

The Act prohibits Federal candidates and officeholders from soliciting non-Federal funds in connection with an election for Federal office. *See* 2 U.S.C. 441i(e); 11 CFR 300.61. Federal candidates and officeholders may “solicit, receive, direct, transfer or spend funds” in connection with a non-Federal election only in amounts and from sources that are consistent with State law, and that do not exceed the Act’s contribution limits or source prohibitions. 2 U.S.C. 441i(e)(1)(B); 11 CFR 300.62. In addition, the Act provides that “notwithstanding” the general prohibition on raising non-Federal funds, Federal candidates and officeholders may “attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party.” 2 U.S.C. 441i(e)(3); 11 CFR 300.64.²

Under 11 CFR 300.64(a), State parties may “advertise, announce or otherwise publicize” that a Federal candidate or officeholder will attend, speak or be a featured guest at a fundraising event, including “publicizing such appearance in pre-event invitations materials and in other party committee communications.” While State parties are free to include references to Federal candidates and officeholders in invitations to an event at which non-Federal funds are raised, this exemption “does not permit Federal officeholders and candidates to solicit non-Federal funds for State parties in written solicitations, pre-event publicity or through other fundraising appeals.” *Revised Explanation and Justification for Candidate Solicitation at State, District, and Local Party Fundraising Events*, 70 Fed. Reg. 37649, 37651 (June 30, 2005). For example, Federal candidates and officeholders are prohibited from serving on “host committees” for a State party event raising non-Federal funds or from signing a solicitation letter asking for non-Federal funds in connection with such an event because “these pre-event activities are outside the statutory exemption in section 441i(e)(3).” *Id.*

Proposed Communication 1 - An invitation from the State or county party committee stating that a Federal candidate or officeholder will be the featured speaker/honored guest, which also asks for non-Federal funds (either funds exceeding the amount limitations or from prohibited sources). The reply card also references the Federal candidate or officeholder.

Proposed Communication 2 - A State or county party committee invitation stating that a Federal candidate or officeholder will be the featured speaker/honored guest, but that does not solicit non-Federal funds in itself. However, the reply card sent in the same envelope would request non-Federal funds without referencing any Federal candidate or officeholder.

² The Commission notes that 11 CFR 300.64 is the subject of ongoing litigation in *Shays v. FEC*, Civ. No. 1:06CV01247 (D.D.C.). Pending the outcome of this litigation, the Commission’s current rule in 11 CFR 300.64 remains in full force and effect. Accordingly, the guidance in this advisory opinion may be relied upon while the current rule remains in effect.

The Commission considered this question with regard to Proposed Communications 1 and 2, but could not approve a response by the required four affirmative votes. 2 U.S.C. 437c(c) and 11 CFR 112.4(a).

Proposed Communication 3 - A State or county party committee "Save the Date" announcement containing the name and date of the non-Federal fundraiser that references a Federal candidate or officeholder as the featured speaker/honored guest but does not ask for any donation. The announcement would also state that more information will follow. The actual solicitation for non-Federal funds would be made in a separate mailing that identifies the fundraising event and the date but does not make any reference to a Federal candidate or officeholder.

The Commission concludes that Proposed Communication 3 would be permissible under the Act and Commission regulations because the announcement would be merely pre-event publicity for a Federal candidate or officeholder appearance at a State party fundraising event and would not constitute a solicitation of non-Federal funds by a Federal candidate or officeholder. Any solicitation of non-Federal funds would be made in a completely separate mailing by the State or county party committee and this separate mailing would not reference the Federal candidate or officeholder.³

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. The advisory opinions cited herein may be found on the Commission's website at www.fec.gov.

Sincerely,

(signed)
David M. Mason
Vice Chairman

³ The Commission has previously examined pre-event publicity for other types of fundraising events in connection with non-Federal elections that are governed by section 300.62. *See* Advisory Opinions 2003-03 (Cantor) (non-Federal candidate fundraisers); 2003-36 (RGA) (non-profit organization fundraisers). This advisory opinion is confined to an analysis of events limited to fundraising for State, district, or local parties under section 300.64 and therefore does not affect the analysis of these prior advisory opinions. Pre-event publicity for a fundraising event held on behalf of both a State, district, or local party committee and a candidate for State office would be governed by section 300.62.