



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 31, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-15

E. Mark Braden
Republican National Committee
Dwight D. Eisenhower Republican Center
310 First Street, S.E.
Washington, D.C. 20003

Dear Mr. Braden:

This responds to your letter of April 2, 1984, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to disbursements by the Republican National Committee for a proposed national television advertising program.

You state that the Republican National Committee¹ intends to undertake a national television advertising program. In your request you included two proposed scripts for the television advertisements. In a script on the subject of the Federal budget deficit, the video opens with the U.S. Capitol and fades to an image of one of the current Democratic presidential candidates. The audio portion begins with the candidate's comments about the deficit. An announcer then interjects: "That's what you said. But look what you've done" An animated graph then depicts a rise in deficits during the candidate's tenure in Congress. The advertisement concludes with the statement: "Act today to preserve tomorrow. Vote Republican."

In the second script, the video opens with a portrait of a current candidate for the Democratic presidential nomination with the camera slowly zooming in on the portrait and then holding the image. The audio portion identifies the candidate by name and states that he "said he'd bring new ideas and morality to government. But look at the list of the new ideas." The audio continues with a "long list of inconsistencies of the candidate" and sums up with these questions: "This is moral leadership? These are new ideas?" Both the video and the audio conclude with the statement: "Vote Republican."

¹ The Republican National Committee ("RNC") is a qualified, multi-candidate political committee and the national committee of the Republican Party. See 2 U.S.C. 431(4), 431(14), and 441a(a)(4).

You state that the Republican National Committee intends to produce and air this advertising program prior to and after the nomination of a Democratic candidate for President. You request an opinion concerning the treatment of the disbursements by the Republican National Committee for the production and placement of general electronic media advertisements using these or similar scripts. Your request specifically raises five questions:

(1) how should disbursements by the Republican National Committee for its proposed national television program be reported to the Commission?

(2) would these disbursements count against the expenditure limitations of 2 U.S.C. 441a(d)?

(3) is the characterization of these disbursements affected by the timing of the broadcast of these advertisements either before or after the Democratic presidential nomination?

(4) would the characterization of these disbursements be affected by an express statement of the purpose of the advertisements as letting a particular Democratic candidate's own words be used against him?

(5) would the characterization of these disbursements be affected by a statement of the advertisement's purpose as the defeat of the Democratic Party's candidates generally without identifying as a purpose the defeat of any specific candidate?

To facilitate a proper analysis, these questions are answered in a slightly altered sequence.

Because these contemplated expenditures would relate to an election for Federal office, they would be governed by the Act, and thus reportable. Under the Act, a national party committee may report disbursements in one of eight categories. See 2 U.S.C. 434(b)(4); 11 CFR 104.3(b)(1), and FEC Form 3X.² Four reporting categories -- transfers to affiliated committees, loans, loan repayments, offsets -- are clearly not applicable to your request. The "operating expenditures" category includes disbursements for such expenses as polling, travel, phone banks, catering, media, rent, personnel, overhead, fund-raising, training seminars, registration and get-out-the-vote drives, and other day-to-day costs that are not made on behalf of a clearly identified candidate and cannot be directly attributable to that candidate. See 11 CFR 104.3(b)(3)(i), 106.1(c), and 110.8(e). The amount of these expenditures is not subject to any limitations. See Advisory Opinion 1975-87. The Commission concludes, however, that expenditures for the television advertisements proposed in this request are not, with one possible exception, the type of expenditures that are properly reportable as "operating expenditures."

The remaining reporting categories are contributions to political committees, coordinated party expenditures, and other disbursements. The reporting category for contributions to political committees includes disbursements to a candidate and his or her authorized campaign committees. See 11 CFR 104.3(b)(3)(v). This category also covers in-kind contributions. 11 CFR

² Also, a national party committee is incapable of making independent expenditures. See Advisory Opinion 1980-119.

100.7(a)(1)(iii). For a multi-candidate political committee, a \$5,000 limitation applies to contributions to a candidate and his or her authorized campaign committees with respect to any election for Federal office. 2 U.S.C. 441a(a)(2); 11 CFR 110.2(a)(1). Coordinated party expenditures are expenditures by the national committee of a political party in connection with the general election campaign of any candidate for President of the United States who is affiliated with that party. 2 U.S.C. 441a(d)(2). The amount of these expenditures is subject to a specific dollar limitation. *Id.* The "other disbursements" category covers disbursements not otherwise reportable under the other categories. 11 CFR 104.3(b)(3)(ix). No dollar limitation applies to these disbursement.³

The threshold question concerns whether the timing of the broadcast of the RNC's proposed television advertisements, either before or after the Democratic presidential nomination, would affect the characterization of RNC expenditures for these advertisements: either as contributions to a candidate or as coordinated party expenditures. Although timing is relevant, the Commission does not view the timing of the broadcasts as controlling how expenditures for the advertisements should be treated for limitation and reporting purposes. First, with regard to viewing the expenditures as contributions to a candidate, Commission regulations contemplate that contributions may be received with respect to the general election before the date of the primary election or nomination. See 11 CFR 102.9(e). Second, the Commission notes that nothing in the Act, its legislative history, Commission regulations, or court decisions indicates that coordinated party expenditures must be restricted to the time period between nomination and the general election.

The Act refers to expenditures "in connection with the general election campaign... ." Where a candidate appears assured of a party's presidential nomination, the general election campaign, at least from the political party's perspective, may begin prior to the formal nomination. Thus, national party expenditures in connection with that campaign are possible. Furthermore, because the national party committee rather than the candidate or his principal campaign committee makes these expenditures, whether a specific nominee has been chosen, or a candidate assured of nomination, at the time the expenditures are made, is immaterial.⁴ Although consultation or coordination with the candidate is permissible, it is not required. See Advisory Opinion 1975-120. The Act gives a national party committee only one coordinated party expenditure limit with respect to the presidential general election campaign.⁵ To permit

³ To the extent that disbursements for the proposed television advertisement relate to any election for Federal office, they cannot be made with funds from prohibited sources. See Advisory Opinions 1978-46 and 1978-10. See also Advisory Opinion 1982-5.

⁴ Significantly, 441a(d) does not by its terms refer to candidates for Federal office as the party's nominees; it refers to such candidates only as those who are "affiliated with" the political party. By contrast, in other contexts where Congress was concerned with the status of Federal office candidates as regards political party activity, it has explicitly referred to "nominees of" the political party. See 2 U.S.C. 431(8)(B)(x), (8)(B)(xii), (9)(B)(viii) and (9)(B)(ix), which exempt certain State and local committee activities "on behalf of nominees of" the party from limitation as a contribution or party expenditure. Also, see 2 U.S.C. 432(e)(3)(A) which refers to the presidential candidate "nominated" by a political party, and 2 U.S.C. 441a(a)(7), 441a(b)(2) which both refer to the candidate of a political party "for election" to the office of President.

⁵ This provision sets a single limitation for coordinated party expenditures for President at the national level. Therefore, if disbursements for these proposed advertisements were made by the national senatorial or congressional campaign committees, such disbursements would be allocable to the single expenditure limitation of 2 U.S.C. 441a(d)(2). See generally Advisory Opinions 1980-119 and 1976-108.

expenditures made prior to nomination but with the purpose and effect of influencing the outcome of the presidential general election to escape this limitation would be inconsistent with the purpose and intent of 2 U.S.C. 441a(d). See generally Advisory Opinion 1975-72. Therefore, the proper analytical focus is whether the expenditures for the television advertisements proposed in this request are made for the purpose of influencing the outcome of the general election for President of the United States. See 2 U.S.C. 431(8)(A)(i), 431(9)(A)(i), and 441a(d)(2). There is no question that expenditures for these advertisements after the nominating conventions would be expenditures in connection with the presidential general election campaign.⁶ This responds to question three.

In your request, you state that the proposed television advertisements will show the image or portrait of one of the current Democratic presidential candidates. They will quote statements by that candidate about the budget deficit or government morality and depict his record relating to those statements. Each advertisement concludes with a visual and audio appeal to "Vote Republican." These advertisements will be broadcast to the general public. The proposed advertisements will prominently display visual images of a current candidate for the Democratic Party's presidential nomination and will emphasize verbal statements by or about such candidate. The advertisements will question or challenge the candidate's statements, position, or record. They will conclude with a partisan statement to "Vote Republican." The clear import and purpose of these proposed advertisements is to diminish support for any Democratic Party presidential nominee and to garner support for whoever may be the eventual Republican Party nominee. These advertisements relate primarily, if not solely, to the office of President of the United States and seek to influence a voter's choice between the Republican Party presidential candidate and any Democratic Party nominee in such a way as to favor the choice of the Republican candidate. The only election which will pose such a choice is the presidential general election. These advertisements effectively advocate the defeat of a clearly identified candidate in connection with that election and thus have the purpose of influencing the outcome of the general election for President of the United States. See generally Advisory Opinion 1978-46. Therefore, expenditures for these advertisements benefit the eventual Republican presidential candidate and are made with respect to the presidential general election and in connection with the presidential general election campaign.⁷

As such, these expenditures are only reportable either as contributions or as coordinated party expenditures. Thus, the Republican National Committee could report expenditures for these advertisements, up to a maximum of \$5,000, as an in-kind contribution to the Republican presidential candidate with respect to the 1984 general election. However, if the Republican presidential candidate in the 1984 general election chooses to accept public funding pursuant to 26 U.S.C. 9001 et seq., he may not accept contributions, except for certain limited exceptions that are not applicable here. See 26 U.S.C. 9003(b)(2); 11 CFR 9003.2(a)(2). Accordingly, in such circumstances the Republican National Committee could not report expenditures for these advertisements as an in-kind contribution to the Republican presidential candidate. Instead, it could then only report these expenditures as coordinated party expenditures pursuant to 2 U.S.C.

⁶ Although not explicitly stated in your request, the Commission assumes that such advertisements would feature the Presidential nominee of the Democratic Party.

⁷ The addition of a statement of purpose as described in question four reinforces the characterization of these advertisements as relating to the presidential general election. This footnote responds to question four.

441a(d)(2) on Schedule F of FEC Form 3X. See generally Advisory Opinions 1978-89 and 1978-46. This responds to questions one and two.

Your fifth question does not state whether the proposed advertisement would refer to all Democratic presidential candidates without identifying any specific candidate or to all Democratic candidates for all Federal offices without identifying any specific candidate or office. If the reference is to all Democratic presidential candidates generally, the characterization of the advertisements and the reporting requirements for the disbursements would remain unchanged from that set forth above. If, however, the reference is to all Democratic candidates generally without identifying (by visual image or audio content) any specific candidate or office, the disbursements would not then be attributable to any candidate or to any campaign for any particular Federal office. Instead, they would be characterized as advertisements promoting the Republican Party over the Democratic Party and to encourage voters to support the Republican Party generally. As such, the disbursements for such advertising would not be reportable as contributions to any specific candidate or as coordinated party expenditures in connection with any specific general election campaign for President, Senator, or Representative. See Advisory Opinions 1978-46 and 1975-87. Such disbursements would be reportable as operating expenditures of the Republican National Committee that are generally related to Federal elections although not on behalf of any clearly identified candidate for Federal office, nor directly attributable to such a candidate. See 11 CFR 104.3(b)(3)(i) and 106.1(c).

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

Sincerely yours,

(signed)

Lee Ann Elliott
Chairman for the
Federal Election Commission

Enclosures (AOs 1982-5, 1980-119, 1978-89, 1978-46, 1978-10, 1976-108, 1975-120, 1975-87 and 1975-72.)

P.S. Commissioners Aikens and Elliott voted against approval of this opinion and will file dissenting opinions at a later date.