



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 10, 1992

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-25

Clay Newton, CPA Treasurer
Owens for Senate Committee
P.O. Box 959
Salt Lake City, UT 84110

Dear Mr. Newton:

This responds to your letters dated May 21 and May 12, 1992, requesting an advisory opinion on behalf of the Owens for Senate Committee ("the Committee") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the treatment of a state convention as a separate election.

The Owens for Senate Committee is the principal campaign committee of Congressman Wayne Owens for election to the United States Senate from the State of Utah. Under Utah law, a candidate for U.S. Senate runs for nomination at a state convention of a political party and, if necessary, in a primary election. If the candidate is the party's nominee after this process, he or she runs in the general election. You wish to know whether the state party convention is a separate election for determining contribution limits, thus enabling an individual to make three \$1,000 contributions to the Committee if Mr. Owens is involved in the convention, the primary election, and the general election.

The Act and regulations define "election" to include a general election, a primary election, and "a convention or caucus of a political party which has authority to nominate a candidate." 2 U.S.C. 431(1)(A) and (B); 11 CFR 100.2(b), (c), and (e). The Commission has previously stated that the question of whether a particular event is an election, or a convention or caucus which has authority to nominate a candidate, is determined by an analysis of relevant state law. Advisory Opinions 1986-17, 1984-16, and 1978-30.

Under Utah law, the delegates at the party primary convention vote for their choice for U.S. Senate nominee. The two persons receiving the highest number of votes for an office are declared the party's nominees to run in the primary election. Utah Code Annotated ("UCA") 20-4-9(8)(g). If, however, a candidate receives 70 percent or more of the votes cast, he or she is the party's nominee without the necessity of running in the primary election. UCA 20-4-9(8)(h). Since the party primary convention has the authority to nominate a candidate by itself, the Commission concludes that it is an election. See Advisory Opinions 1986-21 and 1978-30 (both involving the 70 percent rule in Utah).

Mr. Owens received 69.7 percent of the delegates' votes at the June 13 convention and is a candidate in the primary to be held on September 8. The Committee may therefore accept contributions under a separate limit for the September 8 primary election. These contributions may be made by the same persons who may have already contributed up to the Act's limits for the June 13 convention. See 2 U.S.C. 441a(a)(6). If Congressman Owens receives the party's nomination in the September 8 primary, a separate limit will apply for the general election. The Commission cautions that the Committee should comply with the rules set out at 11 CFR 110.1 and 110.2 for the application of the limits per election and for the designation of contributions.

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,

(signed)

Joan D. Aikens
Chairman for the Federal Election Commission

Enclosures (AOs 1986-21, 1986-17, 1984-16, and 1978-30)