



FEDERAL ELECTION COMMISSION
Washington, DC 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-25

David A. Norcross, General Counsel
Republican National Committee
310 First Street SE
Washington, DC 20003

Dear Mr. Norcross:

This responds to your letters dated August 9 and June 27, 1995, requesting an advisory opinion on behalf of the Republican National Committee ("RNC"), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to costs incurred by the RNC in connection with certain activities to be undertaken in 1995.

You state that the RNC plans to produce and air media advertisements on a series of legislative proposals being considered by the U.S. Congress, such as the balanced budget debate and welfare reform. The purpose of the ads will be to inform the American people on the Republican and Democratic positions on these issues, as well as to attempt to influence public opinion on particular legislative proposals. The ads are intended to gain popular support for the Republican position on given legislative measures, and thereby influence the public's positive view of Republicans and their agenda.

You further state that your request is predicated on the following assumptions: (1) There may or may not be a reference to a Federal officeholder who has also qualified as a candidate for Federal office. (2) If there is reference to a Federal officeholder who is also a Federal candidate, there will not be any express advocacy of that officeholder's election or defeat, nor will there be any "electioneering message" or reference to Federal elections.^{1/} (3) If there is a "call to action," it will be to urge the viewer or listener to contact that Federal officeholder urging support for, or defeat of, a particular piece of legislation. (4) The appropriate Federal Communications Commission disclaimer identifying the RNC as sponsor will be included within each advertisement. (5) The RNC will allocate the salaries of employees associated with this media effort based upon 11 CFR 106.5. (6) The RNC will report this media activity and its associated expenses, as appropriate, on financial disclosure reports filed with the Commission.

In response to the Commission's request for the text of one or more advertisements that have been or may be disseminated as part of this series, you have provided the texts for three such ads--one urging support for the Balanced Budget Amendment and the other two urging that the Medicare program be saved and restructured. Two ads do not mention a Federal candidate, and all three urge support for the Republican position on the issues discussed. The third advertisement (titled "Too Young To Die") mentions President Clinton's name six times, although only in the context of Medicare policy; there is no reference to any election. You state that none of these ads served as the basis for this advisory opinion request, and that this material may or may not be comparable to other such advertisements which the RNC may air in the future.

You further state that it is impossible to determine what effect these types of advertisements have on the electability of candidates at the Federal, state and local level. You believe the costs incurred in connection with these ads should be considered "administrative expenditures" under the Commission's rules on allocation of certain expenditures between Federal and non-federal accounts.^{2/} If so considered, the regulations provide that the costs should be allocated at least 60% to the RNC's Federal campaign account and 40% to its non-federal account. See 11 CFR 106.5(a) and (b)(2)(ii).

The Act requires that contributions accepted and spent to influence any Federal election be received subject to certain limitations and prohibitions. See 2 U.S.C. §§441a, 441b, 441c, 441e, 441f, and 441g. Most of these restrictions do not apply to funds raised and spent to influence only state and local elections.^{3/}

Commission regulations set forth the procedures to be followed by party committees that make disbursements in connection with both Federal and non-federal elections. 11 CFR 106.5. Under section 106.5(a), party committees(4) may make such disbursements in one of two ways: They may make them entirely from funds raised subject to the prohibitions and limitations of the Act; or, if they have established separate Federal and non-federal accounts pursuant to 11 CFR 102.5, they may allocate them between these accounts according to various formulas set forth in section 106.5.

The allocation formulas for national party committees to allocate their administrative expenses and generic voter drive costs are found at 11 CFR 106.5(b)(2). The Explanation and Justification to these rules notes that these formulas reflect the national party committees' primary focus on presidential and other Federal candidates and elections, while still recognizing that such committees also participate in party-building activities at state and local levels of the party organizations. 55 Fed. Reg. 26058, 26063 (June 26, 1990).

After reviewing the additional material provided by the requester, the Commission concludes that legislative advocacy media advertisements that focus on national legislative activity and promote the Republican Party should be considered as made in connection with both Federal and non-federal elections, unless the ads would qualify as coordinated expenditures on behalf of any general election candidates of the Party under 2 U.S.C. §441a(d). See Advisory Opinions 1991-33, 1985-14, and 1984-15. Thus, such costs should be allocated in accordance with 11 CFR 106.5. The Supreme Court in Buckley v. Valeo, 424 U.S. 1, 79 (1976), noted that

the major purpose of political committees is the nomination or election of candidates, so their expenditures are, by definition, campaign related. Similarly, the Internal Revenue Code defines the "(tax) exempt function" of a political organization, including a political party or committee, as "the function of influencing or attempting to influence the selection, nomination, election or appointment of any individual to any Federal, State, or local public office . . . or the election of Presidential or Vice Presidential electors." 26 U.S.C. §527(e).

Section 106.5(a)(2) establishes four categories of costs to be allocated under these rules: administrative expenses; the direct costs of a fundraising program or event; the cost of activities that are exempt from the definitions of contribution and expenditure because they relate to specific state and local party activity; and generic voter drive costs.

You state that you believe the costs of the advertisements should be characterized as administrative expenses, which are defined in a non-inclusive listing at 11 CFR 106.5(a)(2)(i) to include such expenses as rent, utilities, office supplies, and salaries. The Commission notes that, depending on content, the costs of some advertisements may also be characterized as generic voter drive costs, which are defined at 11 CFR 106.5(a)(2)(iv) to include, *inter alia*, costs of "activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate." Although you state that the advertisements in question will not reference Federal elections or contain an electioneering message, their stated purpose--to gain popular support for the Republican position on given legislative measures and to influence the public's positive view of Republicans and their agenda--encompasses the related goal of electing Republican candidates to Federal office. This result is also contemplated by the Commission's regulations at 11 CFR 110.8(e), which recognize that certain party-building activities under specific conditions can feature the appearance of the party's candidates at a "bona fide party event or appearance." Advocacy of the party's legislative agenda is one aspect of building or promoting support for the party that will carry forward to its future election campaigns.

For purposes of the allocation rules, however, it is immaterial whether these costs are characterized as administrative costs or as generic voter drive costs. Under 11 CFR 106.5(b)(2), the costs of both types of activities are allocated 60% to the Federal account and 40% to the non-federal account in non-presidential election years, and 65% to the Federal account and 35% to the non-federal account in presidential election years. FEC Schedules H3 and H4, on which joint activity is reported, similarly do not distinguish between administrative and voter drive costs. Rather, they classify them jointly as "administrative/voter drive" costs.

Since 1995 is a non-presidential election year, the Commission concludes that the proper allocation for these expenditures is at least 60% to the Federal account, with a corresponding allocation to the non-federal account.^{5/} Should the RNC continue these activities into 1996, a presidential election year, the Federal share will rise to at least 65% of these costs.

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)

Danny Lee McDonald
Chairman

Enclosures (AOs 1991-33, 1985-14, 1984-57, and 1984-15)

1 The Commission relies on your statement that those advertisements that mention a Federal candidate or officeholder will not contain any electioneering message. In view of this representation, the Commission does not express any opinion as to what is or is not an electioneering message by a political party committee. The courts and the Commission have addressed the issue of what constitutes an electioneering message by a political party in other circumstances. See Advisory Opinions 1984-15 and 1985-14; Federal Election Commission v. Colorado Republican Federal Campaign Committee, Nos. 93-1433 and 93-1434, 1995 WESTLAW 372934 (10th Cir. (Colo.), June 23, 1995).

2 Your letter makes reference to past conduct of the Democratic National Committee ("DNC"). The Commission stresses that this advisory opinion does not address those issues or imply any opinion whether the DNC's conduct was permitted or not permitted under the Act and Commission regulations. Commission regulations state that requests regarding the activities of third parties do not qualify as advisory opinion requests. 11 CFR 112.1(b).

3 The prohibitions on contributions by national banks, by corporations organized by authority of Federal statute, and by foreign nationals, apply to contributions made in connection with any election whether Federal, state or local. 2 U.S.C. §§441b(a), 441e.

4 The Commission notes that this opinion applies only to covered activity by national party committees. It does not apply to legislative issue advocacy by other entities, such as lobbying expenditures by corporations and their separate segregated funds. See Advisory Opinion 1984-57.

5 The Commission notes that, while committees are free to allocate a higher percentage of the disbursement to their Federal accounts (the language in section 106.5(b)(2)(i) reads at least 60%)(emphasis added), they may not so allocate less than the specified percentages. See Explanation and Justification to the Final Rules on Methods of Allocation Between Federal and Non-Federal Accounts, 55 Fed. Reg. 26058, 26063 (June 26, 1990).