

ADVISORY OPINION 1975-20

STATUS OF POLITICAL ACTION COMMITTEE COMMITTEE FOR THOROUGH AGRICULTURAL POLITICAL EDUCATION

This advisory opinion is rendered under 2 U.S.C. SS 437f in response to a request for an advisory Opinion submitted by Mr. J. S. Stone, Secretary of the Committee for Thorough Agricultural Political Education, and published in the July 29, 1975 FEDERAL REGISTER (40 FR 31878). Interested parties were given an opportunity to submit written comments pertaining to the request.

The Committee for Thorough Agricultural Political Education (C-TAPE) is a registered political committee which files periodic reports of receipts and expenditures with the Commission. C-TAPE contemplates undertaking some or all of a series of activities, described below, and request guidance as to which are attributable to contribution and expenditure limitations and which must be reported.

The Commission has been advised, and assumes that all monetary outlays for C-TAPE's activities are made from a single, general account and that this account contains no corporate monies. Until such time as C-TAPE creates a separate, segregated fund solely utilized for contributions to and independent expenditures on behalf of Federal candidates, C-TAPE must report all receipts and disbursements which finance its suggested activity. The Commission relies upon the authority provided in the Federal Election Campaign Act of 1971, as amended (the Act) at 2 U.S.C. §434(b)(13) in order to require disclosure of disbursements which may not be considered "expenditures" subject to the limitations of Title 18. Unless total outlays for these activities are reported, there would be no conceivable way to account for cash balance on C-TAPE's periodic statements; such an inevitable difficulty in auditing C-TAPE's reports would thwart the Commission's effective enforcement of the Act.

1. Voter Registration Drives and Get-Out-The-Vote Activities

C-TAPE inquires whether "expenses incurred in voter registration drives and get-out-the-vote activities" are chargeable independent expenditures. Under 18 U.S.C. §608(e), independent expenditures "relative to a clearly identified candidate" cannot exceed, in the aggregate \$1,000 per year. But, the definition of "expenditure" explicitly excludes "non-partisan activity designed to encourage individuals to register to vote or to vote." [18 U.S.C. 591(f)(4)(B)]. It is the opinion of the Commission that, that disbursements for such activities which do not expressly or impliedly advocate the election or defeat of a particular candidate are not attributable to the independent expenditure limitation of §608(e). To be exempt, C-TAPE's voter activity must be nondiscriminatory with no efforts made to determine the candidate or party preference of individuals registered or turned out to vote.

2. Educational Campaign Seminars

The Commission regards in a similar manner any cost "of educating and training dairy farmers to be efficient and effective in organizing and participating in (1) political campaigns, (2) voter registration drives and (3) get-out-the-vote activities." The costs of these workshops are generally not attributable as independent expenditures if the nature and goals of the activity cannot be associated with the advancement of a "clearly identified candidate."

However, the Commission may regard the costs of political campaign seminars as chargeable, if the candidate allegiance of C-TAPE is known and if the seminars are conducted within the district of an endorsed candidate for the House of Representatives, or within the State of an endorsed Senatorial candidate.

3. Reimbursed Travel

Third, C-TAPE asks whether "travel expenses of dairy farmers, their spouses and employees of dairy cooperatives," in respect to the following, need be charged against contribution or expenditure ceilings: (1) travel to testify at hearings held by elected officials or public agencies; (2) travel to visit the public officials who represent them in either State or Federal offices; (3) travel to attend fundraising dinners or political rallies. C-TAPE further inquires whether per diem payment, in addition to reimbursed expenses, is chargeable.

It is the opinion of the Commission that official legislative hearings, those financed by congressionally appropriated monies, are an integral part of the legislative process, and that participation in official administrative rulemaking or adjudicatory hearings and in congressional committee hearings is participation in the legislative process. Support for the Commission's views can be found in Gravel v. U.S., 408 U.S. 606 (1972) at 626, where the Supreme Court held that Congressman's holding of committee hearings is "within the sphere of legitimate legislative activity." As the purpose of testifying may be presumed to be essentially unrelated to the advocacy of the defeat or election of a Federal candidate reimbursed travel expenses will not count against the independent expenditure or "in-kind" contribution limitations.

Likewise, where the purpose of a visit to public officials is not campaign-oriented, reimbursed travel expenses are not contributions or expenditures. However, if dairy farmers or cooperative employees, during the course of their visit, undertake volunteer work for a portion or all of their visiting time on behalf of a candidate or the candidate's campaign committee, C-TAPE makes an "in-kind" contribution or independent expenditure in the amount of the reimbursed travel and per diem expenses. Under 18 U.S.C. §591(e)(5)(A), personal services must be provided without compensation" in order to be excluded from the definition of "contribution." Reimbursement of travel and per diem costs is a thing of value, and would be an attributable contribution "in-kind" or independent expenditure by C-TAPE to candidates or campaign committees.

In the third case, the Commission may regard refunding for travel to fund-raising dinners or political rallies as subject to the independent expenditure limitations of 18 U.S.C. §608(e). C-TAPE provides a direct benefit to its members by subsidizing their transportation to a campaign function, and this benefit may inure to the benefit of the candidate.

The Commission has been advised that per diem expenses, as paid by C-TAPE, include the cost of hiring substitute labor for the farms of those members and employees of dairy cooperatives who travel to testify at hearings, to visit public officials and to attend political functions. In each case considered, per diem payment will be treated in the same manner as travel reimbursement.

4. Information Expenses

C-TAPE lists, as other possible expenses, the “cost of informing public officeholders, consumers, and the general public about farmer cooperatives, dairy industry, beef and dairy imports, and agriculture” by films, speakers, advertisements and other techniques. Unless C-TAPE specifically endorses or supports a clearly identified candidate through these methods, or alerts the public to its political activities relative to a clearly identified candidate, such costs are not attributable independent expenditures.

5. Official Non-Campaign Functions

C-TAPE may plan to “share in the expenses of non-campaign meetings or functions held by public officials,” examples including (1) Governor’s conferences, (2) annual meetings of associations of local and State public officials, and (3) inaugural balls. Assuming that office-related activities on the State or local level are not conducted to directly assist the Federal campaign of any “clearly identified candidate,” expenses for a Governor’s conference or an association’s annual meeting are not attributable to the ceiling of 18 U.S.C. §608(e). [See, in general AO 1975-14, The Federal Register, 40 FR 34084]. Similarly, unless ticket money from inaugural balls held for State or Federal officials is contributed to or expended on behalf of a Federal candidate or the candidate’s committee, the purchase of tickets for inaugural balls is not subject to limitations by the Act.

6. Small Gifts

Sixth, C-TAPE requests whether “the purchase of small Christmas or birthday gifts. . .i.e. cheese (\$5-\$25)” to Federal candidates or officeholders must be considered “in-kind” contributions, and applied toward the \$1,000 or \$5,000 contribution limitation. 18 U.S.C. §608(b)(1)-(2). It is the opinion of the Commission that such small “bona fide” gifts are not “in-kind” contributions. Unlike earmarked monies to a principal campaign committee or to a Federal office account, a gift of dairy products is not directed by the donor use in “political activities.” [See AO 1975-14, The Federal Register, 40 FR

34084]. The Commission's opinion on this point is influenced by the minimal value of C-TAPE's suggested gifts.

The Commission notes that, at best, such gifts stand at the periphery of that area of activity which led the Congress to enact 18 U.S.C. §203, over which the Commission has no jurisdiction.

7. Honorariums

Finally, C-TAPE requests a decision as to the status of honorariums paid to Federal public officeholders for appearances before dairy farm organizations. A Federal officeholder may not accept an honorarium of more than \$1,000 for any one appearance, speech or article, or accept honorariums aggregating more than \$15,000 in any calendar year. 18 U.S.C. §616. If a Federal official is, under the Act, a candidate for Federal office at the time that he makes an appearance or speech before a substantial number of people within his electorate, any honorarium given for these actions shall be treated as a contribution subject to the limitations of 18 U.S.C. §608. The Commission [ruled] in AO 1975-8 that "*** once an individual (including an officeholder) becomes a candidate for Federal office, all speeches made before substantial numbers of people, comprising a part of the electorate with respect to which the individual is a Federal candidate, are presumably for the purpose of enhancing the candidacy." 40 FR at 36747. A public appearance of a candidate before a substantial audience, whose members "could be influenced to take affirmative action in support of his candidacy as a result of that appearance," is made, in the Commission's view, for the purpose of influencing a Federal election. [See AO 1975-13, The Federal Register, 40 FR 36747.] Any payment by a political committee to a candidate for Federal office in connection with such an appearance must accordingly be treated as an attributable contribution.

It is to be particularly noted that "contributions" and "expenditures" by national banks, corporations or labor unions are separately defined in 18 U.S.C. §610; the Commission's determinations respecting the attribution of contribution and expenditure limits to C-TAPE's activity as defined in 18 U.S.C. §591 should not be read to control the application of 18 U.S.C. §610 to similar activity.

This advisory opinion is issued on an interim basis only pending the promulgation by the Commission of rules and regulations or policy statements of general applicability.

DATE: 25 Sep 1975

(signed) _____
Thomas B. Curtis
Chairman, for the
Federal Election Commission