

**Re: AOR 1975-96**

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AOR 1975-96 issued as  
OC 1975-126

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OC 1975-126

Mr. R. L. McElheny  
Chairman, Minnesota Republican  
Finance Committee  
555 Wabasha Street  
St. Paul, Minnesota 55102

Dear Mr. McElheny:

This letter responds to your request for an advisory opinion which was originally processed as AOR 1975-96 and asks several questions concerning the application of the Federal Election Campaign Act of 1971, as amended, to the fundraising activities of the Minnesota Republican Finance Committee. I apologize for this belated response.

The Supreme Court recently held in Buckley v. Valeo, 44 U.S.L.W. 4127 (S.C. January 30, 1976), that the Commission as constituted could not be given statutory authority to issue advisory opinions. Although this part of the Court's judgment was stayed for 30 days, and later continued for an additional 20 days, the Commission has determined that it will not issue further advisory opinions under 2 U.S.C. §437f during the stay period as extended. Thus, this letter should be regarded as an opinion of counsel rather than an advisory opinion.

It is my understanding that the Minnesota Republican State Party raises funds through efforts of finance committee organizations on state-wide, Congressional district, and local levels. The finance committees conduct two basic types of fundraising activity. Through neighbor-to-neighbor solicitation, volunteer workers collect contributions from friends and associates. Contributors to state-wide solicitations are informed that un earmarked donations will be used at the discretion of the State Finance Committee. Contributors to district or local committee fund drives are informed that some portion of their donations will remain within the district or local committee to be used at the discretion of that committee.

Furthermore, you have informed me that the State Finance Committee has created the Minnesota Republican Congressional Fund (RCF)<sup>1/</sup> to encourage contributions from corporate employees and political action programs, RCF intends to solicit the administrative officers of corporate segregated funds, to receive earmarked monies from payroll deduction plans, and to organize on-site solicitation of corporate employees. RCF will hold monies earmarked for use in supporting Congressional candidates in escrow until it determines the recipients, and will charge the candidates a 10% fee for administrative costs in filing reports, maintaining records and mailing contributions.

1. On-Site Solicitation

You first inquire whether Republican volunteer workers may solicit contributions from corporate employees or corporate Political Action Committees within a company's premises if the contributions are designated for support of Federal candidates only.

Section 610 of Title 18, United States Code, prohibits contributions or expenditures by any corporation, labor union or national bank in connection with any election to any political office. Contribution or expenditure is defined as

"any direct or indirect payment, distribution, loan, advance, deposit . . . or anything of value . . . to any candidate, campaign committee or political party or organization in connection with any election."

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<sup>1/</sup> From your letter it appears that the RCF may be designated as your Federal campaign committee to minimize the State Finance Committee's disclosure obligations under Federal law. See §102.6 of the Commission's proposed Disclosure Regulations transmitted to the Congress on December 4, 1975, copy enclosed. However, if both the RCF and the State Finance Committee are each involved with Federal candidate financial support in excess of \$1,000, see 2 U.S.C. §§431, 433, and 434, then both would be "political committees" for Federal purposes.

In my opinion there is no legal objection to the State Finance Committee's soliciting the administrative officers of a corporate PAC for contributions by the PAC to the Committee. A corporation may, within the exemption from the definition of "contribution" in §610, "establish, administer and solicit contributions to a separate segregated fund to be utilized for political purposes . . . ." To effectively "administer" a separate segregated fund and determine eventual recipients of contributions, PAC officers must consider solicitations from representatives of political committees and candidates.

At this time, I am unable to answer whether direct solicitation of contributions from corporate employees on corporate premises would constitute a violation of §610. In preliminary discussion of your advisory opinion request, conducted on December 2, 1975, the Commission recognized that corporate permission to solicit its employees on corporate property, when granted to a particular candidate or committee may be a "gift of value" in connection with an election insofar as it entails the influence of corporate acquiescence in and support of a particular Federal candidate. I refrain from rendering an opinion on so substantial an issue, which should be determined by the Commission as a whole. This question will be addressed and resolved separately by the Commission, if and when it is reconstituted, and you will be informed of its decision immediately.

2. Operation of the Minnesota Republican State Finance Committee<sup>2/</sup>

(a) May contributions generally earmarked for use in supporting Congressional candidates be held in escrow by the State Finance Committee until the recipients are determined, or until the intended recipients are in need of the monies, and may the State Finance Committee charge a 10% fee for administration?

I find no objection to the procedure of holding contributions earmarked for use in support of Congressional candidates in escrow until either the State Finance Committee determines the recipient candidates or the candidates

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2/ As discussed in footnote 1, if the State Finance Committee designates and utilizes the RCF as its Federal campaign committee, then the following discussion would pertain to RCF, rather than the State Committee.

indicate need of the monies allocated to them, nor to your proposal to charge a 10% administrative fee for processing contributions to a candidate. If the candidate or the candidate's principal campaign committee reimburses in a separate transaction by a check drawn from its campaign depository or by an amount from its petty cash fund, the payment will be treated as an expenditure reportable pursuant to 2 U.S.C. §434 and the Proposed Regulations on Disclosure, Federal Register, 40 FR 44698 (Sept. 29, 1975). If, on the other hand, the Committee finances its administrative costs from monies in the RCF account for solicitations which are not designated for a particular candidate, payment will constitute "costs incurred by a political committee . . . with respect to the solicitation of contributions . . . to any general political fund controlled by such political committee" [18 U.S.C. §591(f)(4)(I)]. As such, the payment is exempt from the definition of "expenditure" under §591, and will not apply toward the Committee's limits with respect to a particular candidate as either an expenditure in connection with the general election of a Federal candidate [18 U.S.C. §608(f)] or as a contribution "in-kind." Since fundraising costs are not exempt expenditures under 2 U.S.C. §431(f), the Committee would be required to report payment of administrative costs from general RCF monies.

(b) May the State Finance Committee spend escrowed funds without limit in broad support of all Republican Congressional candidates in Minnesota in either the primary or general election (i.e., for sample ballots or state-wide advertising sponsoring three or more Federal candidates)?

The definitions of "contribution" and "expenditure" in 18 U.S.C. §§591(e)(5)(E), (f)(4)(G) exempt, in certain circumstances, disbursements in broad support of Federal candidates by a State or local party committee. "Contributions" and "expenditures" do not include:

"the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot or other listing, of three or more candidates for any public office for which an election is held in the State in which such committee is organized,

except that this clause shall not apply in the case of costs incurred by such committee with respect to a display or any such listing made on broadcasting stations, or in newspapers, magazines or other similar types of general public political advertising."

Accordingly, disbursements by the State Committee for sample ballots, slate cards or other similar printed listings may be made without being charged against expenditure limitations for a State party committee and its subordinates in a general election [18 U.S.C. §608(f)(3)(B)] or against the applicable ceiling in 18 U.S.C. §608(b) as an "in-kind" contribution.<sup>3/</sup> As long as the State Committee continues to report to the Commission, however, such disbursements must be included in the committee's report.<sup>4/</sup> See Part 105 of the Commission's proposed Disclosure Regulation. Similarly, once the RCF is constituted as a Federal committee, its disbursements for these purposes must be included on its reports to the Commission. Unless total outlays for these activities are reported, there would be no way of accounting for cash balance on the respective committee's periodic statements; such an inevitable difficulty in auditing the State Committee's report would thwart the Commission's effective enforcement of the Act.

(c) May the State Committee spend \$10,000 of escrowed funds in connection with both the primary and general elections of each Republican Congressional candidate? Does the phrase "spend on behalf of a candidate" comprehend an outright cash contribution to the candidate's campaign committee to be used at its discretion?

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<sup>3/</sup> However, costs incurred for broad support of Congressional candidates in any newspaper, magazine or broadcast advertising are attributable to these limits, and must be reported as allocated among the Congressional candidates in proportion to the benefit reasonably expected to be derived, pursuant to the Commission's proposed regulations on allocation, which were sent to the Congress on January 19, 1976. I enclose a copy of that proposed regulation.

<sup>4/</sup> Such disbursements could not be made from funds contributed by persons or organizations covered by 18 U.S.C. §§610 and 611.

The conditional language of 18 U.S.C. §608(f)(3)(B) responds directly to this question. The section provides:

" . . . a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds . . . (B) in the case of a candidate for election to the office of Representative . . . \$10,000."

Therefore, the State Committee may expend \$10,000 of the escrowed monies only in connection with the general election campaign of each Congressional candidate.<sup>5/</sup> During the primary period, it may contribute up to \$5,000 to each Congressional candidate if the State Committee has met the qualifications of a "multi-candidate committee" in 18 U.S.C. §608(b)(2). Otherwise the State Committee may only contribute \$1,000 to each Congressional candidate.

An "outright cash contribution" to a candidate's campaign committee, to be used at its discretion, is not an expenditure for purposes of 18 U.S.C. §608(f). The focal distinction between a contribution and expenditure is one of dominion and control. An outright donation of monies or anything of value, when it is actively or constructively received by a candidate or committee, comes within the full dominion and control of the candidate or committee, and may be applied to any purpose at their discretion. Such an outright donation is a contribution, and is attributable to the limits of 18 U.S.C. §608(b).

A State Committee expenditure is generally characterized by the fact that the beneficiary (e.g., here, the Congressional candidate or his/her campaign committee) has not exercised total dominion or control over the purpose to which a disbursement is applied. I note that the Commission has previously held that §608(f) expenditures may be made in coordination or consultation with the candidate-beneficiary. See Advisory Opinion 1975-120, a copy of which I enclose.

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<sup>5/</sup> In addition to general election spending for House candidates, §608(f) allows a State committee, including any "subordinate committee," to spend two cents times the State's voting age population in connection with the general election campaign of a Senate candidate in such State.

3. Apportionment of Unearmarked Contribution for Local, State and Federal Purposes

You indicate that the State Committee will receive funds which are raised by neighbor-to-neighbor solicitation and which are not predesignated or earmarked for use only in Federal elections. You state further that such funds would be apportioned for local, state and Federal activities on a discretionary basis. I regret to note that this practice would not be permissible. Under §102.6 of the Commission's proposed Regulations on Disclosure:

"(a) (1) Each state committee . . . shall either

(b) (1) Register as a political committee and report all receipts and expenditures Federal and non-Federal pursuant to these regulations, or

(2) establish a separate Federal campaign committee, which shall register as a political committee. The Federal campaign committee shall establish a segregated Federal account in either a state or national bank, which account may not receive contributions other than contributions designated for such committee, or where the solicitation expressly states that such contribution will be used for Federal elections. (emphasis added)

The effect of this provision is to preclude the Federal account from receiving any monies which are not earmarked for that account. Accordingly, the fundraising efforts you describe and indeed any Federal solicitation for that matter, must inform the potential donor of the degree to which any contribution will be used for Federal purposes. I have recently had occasion to review solicitation practices of the Republican State Committee in Texas, and I enclose a copy of my opinion with regard thereto for your guidance.

4. Independence of Congressional District, County of Local Committees

Finally, you inquire whether a Congressional district, county or local finance committee may contribute \$5,000 to a Federal candidate in the primary and general elections disregarding similar contributions by the State Committee.



The Commission has previously determined that if two or more political committees are under common control, they will be entitled to only one contribution limit between them for any candidate in any election. Advisory Opinion 1975-29, a copy of which is enclosed. In order that local, county or district party committees may be considered separate organizations for purposes of applying the contribution limitations of 18 U.S.C. §608(b), they must be in fact truly independent of the State Committee. As noted in Advisory Opinion 1975-29, ". . . if the State Committee exercises control over any contribution by . . . [a local party committee], such contribution will count as a contribution by the State Committee. The Conference Report permits the maximum contribution from each level of the organization if the decision or judgment to make such contributions is independently exercised within the separate levels of the organization." See House Conference Report No. 93-1438, p. 51.

Subsequent to receiving your inquiry, I was further informed of the structural relationships among the State and lower-level committees. It is my understanding that each district, county and local committee has its separate administrative officers and finance treasurer, elected by its own members who may or may not also be members of the Minnesota Republican State Party. Each committee reports separately to the Minnesota Republican State Ethics Commission, and lower-level committees are not required under Republican bylaws to report to the State Committee. The fundraising goals of each committee are established by its leadership and the leadership of the level above (e.g., State and district committees' leaderships determine the district's fundraising goal). The State and lower-level committees further adopt a formula, whereby the State Committee receives a percentage of the contributions raised by the lower-level committees, this percentage decreasing as the lower-level committee nears its fundraising goal. Each committee conducts fundraising events either separately or jointly with the State Committee. These contributions are transferred to the State Committee which refunds in an amount pursuant to the adopted formula. Over the refunded monies in its own account, each lower-level committee exercises full discretion, and selects recipient Federal candidates without approval or instruction from the State Committee.

In these described circumstances, it is my opinion that sufficient financial independence exists to consider the Congressional district, county and local finance committees independent and separate organizations for purposes of contribution limitations in 18 U.S.C. §608(b). If the lower-level committees meet the eligibility requirements of "multi-candidate committees" in 18 U.S.C. §608(b)(2), they are entitled to contribute \$5,000 to any Federal candidate for any election. Until they fulfill the requirements, they are limited to the \$1,000 contribution ceiling of §608(b)(1). Each lower-level committee that anticipates receiving contributions or making expenditures related to Federal elections during the calendar year in an aggregate amount exceeding \$1,000 must file a separate statement of organization [2 U.S.C. §433] and reports of receipts and expenditures with the Commission [2 U.S.C. §434].

This response constitutes an opinion of counsel which the Commission has noted without objection, however, Commissioner Tiernan objects to the issuance of any opinion of counsel during the period of the Supreme Court's stay granted in Buckley, supra.

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.  
General Counsel

Enclosures

DSkover:bjm:3/10/76  
cc: Docket Section (I/C #333)  
JGM  
BL  
DSkover