



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 14, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-116

Brad J. Sherman
5007 Stony Creek Road #431
Culver City, California 90230

Dear Mr. Sherman:

This responds to your letter dated September 18, 1980, requesting an advisory opinion on behalf of Americans for a Responsible Presidency ("ARP"), a registered Political committee, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to certain proposed activity by ARP.

Your letter indicates that ARP is a political committee "totally independent of any other political committee, candidate or political party." You state further that "several persons who are or will be making speeches and campaigning for certain presidential candidates are interested in assisting ARP, principally in fundraising." The campaigning which these persons do on behalf of the other presidential candidates, you say, is at the direction of the candidate or his agents, and "these persons ... have or will be receiving reimbursement from the candidate's committee for their expenses in connection with their campaigning for the presidential candidate or candidates involved."

In view of this factual situation, you pose the following questions for Commission determination:

1. Can a person who only makes speeches on behalf of a presidential candidate but who does not have the authority either express or implied to make or direct an expenditure of the funds of any authorized campaign committee (except to incur personal travel expenses) also make speeches and raise funds on behalf of ARP without affecting ARP's independent status?

2. Can ARP reimburse the expenses of such an individual for that individual's work on behalf of ARP without affecting ARP's independent status?

3. Would the answers to the first two questions be different if the person described therein as wishing to assist ARP, in addition to making speeches on behalf of a presidential candidate, also consults with the candidate and/or his agents regarding campaign strategy? Is an individual an "agent" of a candidate under 11 CFR Part 109 if the individual receives reimbursement for his campaign expenses and also consults with the candidate and his agents, but does not direct the making of expenditures by others, and is not an officer of the candidate's campaign committee?

With regard to your first question, your request states that ARP wishes to have several persons who are now or who will be making speeches and engaging in campaign activity on behalf of certain presidential candidates, assist ARP in its own fundraising program, and further, that these persons have already received reimbursement or will receive reimbursement from the campaign committee of the presidential candidate on whose behalf they are acting. The Commission concludes that based on these facts, ARP would be precluded from making independent expenditures in support of, or in opposition to the opponents of, the presidential candidate from whom these persons had received reimbursement.

This conclusion follows the Commission's response to a similar factual situation presented in Advisory Opinion 1979-80, a copy of which is enclosed. In Situation #2 of that request, the National Conservative Political Action Committee ("NCPAC"), a political committee making independent expenditures in opposition to a Democratic candidate for U.S. Senate proposed to engage an employee of a potential Republican candidate, who would be an election opponent of the Democratic candidate, as its political consultant. The issue presented was whether, assuming the employer actually became a candidate for the Republican nomination, the employee of that candidate would be precluded either from working for his employer/candidate or for NCPAC.

The Commission concluded, based on its regulations, that if the employer did become a candidate and did, in fact, engage his employee "in some capacity as an agent, a political consultant, advisor, or campaign worker, the presumption of the Commission regulations would preclude NCPAC from making independent expenditures in opposition to that candidate's opponent" if NCPAC engaged the candidate's employee as a political consultant. (See 11 CFR 109.1(b)(4) and particularly, 11 CFR 109.1(b)(4)(i)(A)).

Commission regulations define the term "independent expenditure" to mean "an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate which is not made with the cooperation or with the prior consent of, or in consultation with or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate." (Emphasis added.) See 11 CFR 109.1(a). The regulations further provide that the phrase "made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate" means in part,

- (i) Any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast

of the communication. An expenditure will be presumed to be so made when it is_

(A) Based on information about the candidate's plans, projects, or needs Provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made;

(B) Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent; 11 CFR 109.1(b)(4)(i).

Thus, in the situation presented by this request, the Commission concludes that if ARP allows persons having received reimbursement from the campaign committees of presidential candidates to assist in ARP's fundraising efforts, ARP would be precluded from making future independent expenditures in support of, or in opposition to the opponents of, those presidential candidates. See 11 CFR 109.1(b)(4)(i).

Your second question is whether reimbursement by ARP for the expenses of individuals, who are described in the first question, would affect ARP's "independent status". This question assumes that individuals who have previously received, or will receive, reimbursement from the campaign committees of presidential candidates, could work on behalf of ARP without adversely affecting ARP's ability to make independent expenditures with respect to those candidates. To the contrary, as discussed in the answer to your first question, once these persons are reimbursed for expenses by the presidential campaign, regardless of whether ARP reimburses such persons for their expenses in assisting ARP, their described speeches and fundraising for ARP precludes ARP from making independent expenditures in support of, or in opposition to the opponents of, those presidential candidates.

With regard to your third question, the Commission concludes that the fact that a person who, in addition to making speeches on behalf of a presidential candidate, also consults with that candidate regarding campaign strategy would not alter the Commission's responses to the first and second questions presented by your request. (See discussion in response to question one; see also 11 CFR 109.1(b)(4)(i)(A) and (B)).

With respect to the other portion of your third question regarding the status of a person who makes speeches on behalf of a presidential candidate as an "agent" of that candidate as defined at 11 CFR 109.1(b)(5), the Commission concludes that it is not necessary to reach this issue. Since the Commission has concluded in response to your first question that if ARP allows a person, who has made speeches on behalf of and who has received reimbursement from a presidential candidate, to assist in ARP's fundraising activity, ARP would be precluded from making independent expenditures, a discussion of whether such person is an "agent" of that presidential candidate is immaterial. See generally Advisory Opinion 1979-80.

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 yours,

(signed)

John W. McGarry
Vice Chairman for the
Federal Election Commission

Enclosure (AO 1979-80)