



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 30, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-60

C. Page Hamrick, III, Treasurer
Galperin for Congress Committee
1206 Virginia Street, East
Charleston, West Virginia 25301

Dear Mr. Hamrick:

This refers to your letter of May 8, 1980, as supplemented by letter of May 14, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the special and primary elections of June 3, 1980, for the Third Congressional District of West Virginia.

Your letter explains that shortly after the death of the late Congressman John M. Slack a vacancy was formally declared, and a special election was called pursuant to West Virginia Code §3-10-4. The special election was called for June 3, 1980, which is also the date of the regular 1980 primary elections in West Virginia. Under state law, the candidates nominated to run in the special election to fill the vacancy were chosen by the congressional district executive committee of each respective political party; these conventions were held on April 26, 1980. Commission records indicate that Mr. Galperin was an unsuccessful candidate for the special election nomination at the convention of April 26. He is, however, a candidate seeking general election nomination in the June 3rd primary to run in November, 1980, for the Congressional term beginning in 1981.

In this situation, you ask specifically whether the April 26th conventions constitute a separate election for purposes of the contribution limits in the Act. 2 U.S.C. 441a(a). The contribution limits in 441a(a)(1) and (a)(2) apply separately with respect to each election. 2 U.S.C. 441a(a)(6); also see 11 CFR 110.1(j)(1) and 110.2(d)(1). Therefore, if the April 26, convention in which Mr. Galperin was a candidate seeking nomination is a separate election, then his campaign committee would be permitted to accept contributions for both that election as well as for the June 3 primary election.

The issue of whether the April 26th convention was an election is determined on the basis of West Virginia law since the Act defines "election" to mean, *inter alia*, a convention of a political party which has authority to nominate a candidate. 2 U.S.C. 431(1)(B); also see Commission regulation 100.2(e) at 45 Fed. Reg. 15094 (March 7, 1980), effective April 1, 1980; and Advisory Opinions 1978-25 and 1976-58 (copies enclosed). West Virginia election laws at §3-10-2 (referred to in §3-10-4 pertaining to vacancies in representation in Congress) provide that when a vacancy is to be filled at a special election, candidates to be voted for at such special election, "shall be nominated by a state convention... of the political party...". West Virginia Code §3-10-2. For a vacancy in Congress, the congressional district executive committee of a political party holds the convention. West Virginia Code §3-10-4. Accordingly, the Commission concludes that the April 26 convention constituted an election as regards Mr. Galperin who participated therein as a candidate for nomination to run in the special election of June 3.

In reaching the foregoing conclusion, the Commission points out that contributions with respect to the April 26th convention must have been received* on or before April 26, 1980. However, an otherwise lawful contribution after the April 26 convention may be designated in writing for that "election," but only to the extent it does not exceed net debts outstanding from the Galperin campaign for the convention nomination. 11 CFR 110.1(a)(2)(i). A contribution to the Galperin committee received after April 26, and not designated in writing for the April 26 convention (permissible only to the extent of unpaid debts incurred for that convention) is treated as made with respect to the June 3 primary election for which Mr. Galperin is also a candidate. 11 CFR 110.1(a) (2)(ii). As Mr. Galperin did not obtain the convention nomination for the special election of June 3 (to fill the current vacancy), the question does not arise of whether he is entitled to a separate contribution limit for that special election.

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)

Max L. Friedersdorf
Chairman for the
Federal Election Commission

* Commission regulations generally treat the date of a contribution as the date of receipt. See 102.8(a), 102.9(a), 104.3 (a)(4), and 104.8 at id. 15106, 15110, 15114.