



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 25, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-25

Mark A. Dunlea, Esq.
Sonia Johnson, Citizen for President
1101 N. Highland
Arlington, VA 22204

Dear Mr. Dunlea:

This refers to your two letters dated May 3, 1984, requesting an advisory opinion on behalf of Ms. Sonia Johnson regarding application of the Presidential Primary Matching Payment Account Act ("Matching Payment Act"), 26 U.S.C. 9031-9042, to Ms. Johnson's campaign to secure the 1984 nomination of the Citizens Party for the office of President.

Your request explains that in addition to seeking the presidential nomination of the Citizens Party, which will make its nomination by national convention on June 1-3, 1984, Ms. Johnson is a candidate in the "Presidential Primary of the California Peace and Freedom Party." This primary will be held on June 5, although the Peace and Freedom Party's presidential candidate, you state, will be nominated at a state convention to be held in "mid-August" 1984. Your request further indicates that Ms. Johnson has taken "formal steps to place her name in nomination" as the presidential candidate for the Consumer Party in Pennsylvania. The Consumer Party has "official ballot status" in Pennsylvania and, according to your request, will hold its state nominating convention "sometime this summer." In addition, you state that Ms. Johnson is competing with Dennis Serrette for both the Consumer Party and the Peace and Freedom Party nominations.*

Based on Ms. Johnson's presidential campaign for the nominations of the Peace and Freedom Party in California and the Consumer Party in Pennsylvania, and assuming she would otherwise become eligible under the Matching Payment Act, you request an advisory opinion

* You note that Ms. Johnson is negotiating and discussing other presidential nomination prospects with the Socialist Party and National Unity Party. Neither of these possible nominations have developed to the point of presenting a specific factual situation. Accordingly, the Commission may not reach any issues that may arise in either or both of these cases. 2 U.S.C. 437f(a), 11 CFR 112.1(b).

whether Ms. Johnson's matching payment period would extend beyond the date of nomination by the Citizens Party. You specifically request that the "mid-August" date on which the California Peace and Freedom Party will select its presidential nominee be established at the end of Ms. Johnson's matching payment period. You have also asked whether Ms. Johnson (again, assuming she becomes eligible under the Matching Payment Act) may use Federal treasury matching payments for expenses related to ballot access costs to place her name on the ballot for the general election if such costs are incurred or paid "up until the last day of her matching payment period."

The Commission concludes that Ms. Johnson's matching payment period may be extended until the date on which the state convention of the Peace and Freedom Party nominates its candidate for the office of President, provided this date is no later than the last day of last major party convention held to nominate a presidential candidate. The Commission also concludes that general election ballot access expenses of Ms. Johnson may be paid from Federal matching payments to the extent such expenses are paid or incurred no later than the last day of her matching payment period.

The Commission explained in Advisory Opinion 1984-11 that a candidate who sought the presidential nomination of several different state political parties could establish eligibility if the requirements of the Matching Payment Act and Commission regulations were otherwise satisfied. The Commission also concluded therein that the matching payment period for Dennis Serrette would end on the earlier of (1) the last date when Mr. Serrette is nominated by any political party on the state level, or (2) the last day of the last national convention held by a major political party in 1984. As you know, in Advisory Opinion 1983-47, the Commission addressed Ms. Johnson's possible eligibility under the Matching Payment Act as a presidential candidate seeking the nomination of the Citizens Party, a national political party. That opinion did not consider the possibility that she would also be seeking the presidential nominations of other political parties on the state or national level.

Given its conclusion in Advisory Opinion 1984-11, the Commission is of the view that Ms. Johnson's concurrent campaign for the national convention nomination of the Citizens Party should not result in a shorter matching payment period for her, than for a candidate who only seeks the presidential nominations of political parties at the state level, rather than at the national level. In the case of presidential candidates seeking political party nominations, other than the nomination of either of the two major political parties, the Matching Payment Act appears to at least contemplate, if not require, that such a candidate have an opportunity to establish eligibility and collect matchable contributions for a period of time that closely approximates the period available to major, party candidates. Hence in defining the term "matching payment period" the Matching Payment Act sets out several alternatives: the date of nomination by national convention of a political party, the date of party nomination by other means, and the last date of the last national nominating convention held by a major political party in the presidential general election year. 26 U.S.C. 9032(6), 11 CFR 9032.6. Neither the Matching Payment Act, nor Commission regulations, require that the matching payment period for one nonmajor party presidential candidate be shorter than that of another such candidate solely for the reason that one is seeking a national party nomination by national convention, and the other candidate is seeking nomination only by state political parties. Both candidates should, in the Commission's

view, have the same range of alternatives for the determination of their matching payment periods.

With respect to your question regarding the use of Federal matching payments for general election ballot access costs incurred until the end of Ms. Johnson's matching payment period, the Commission reaches the same conclusion here and for the same reasons as were set forth in Advisory Opinion 1984-11. In pertinent part, that opinion states:

In Mr. Serrette's situation, expenditures will apparently be made to collect petition signatures for the general election ballot. The Commission is of the opinion that these expenses, to the extent they are paid or incurred within what would be Mr. Serrette's matching payment period if he becomes eligible for matching funds, would be qualified campaign expenses for purposes of the Matching Payment Act.

The Commission bases this conclusion on analogous provisions (limited to independent or nonmajor party candidates) of its regulations defining primary election for contribution limit purposes. The regulations recognize that for nonmajor party candidates the requirements of State law governing qualification for a position on the general election ballot serve purposes similar to a primary election or other nominating process. See 11 CFR 100.2(c)(4). Moreover, in Advisory Opinion 1975-44 (copy enclosed) the Commission addressed contribution limit issues with regard to the presidential candidate of a non-major party and held that such a candidate could receive contributions with respect to a nomination/primary election until the date on which the last major party to do so nominates its presidential candidate. The Commission emphasizes that this opinion reaches the qualified campaign expense issue only with respect to the ballot petition expenses of the Serrette campaign; the Commission is not herein addressing any other expense category.

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)

Lee Ann Elliott
Chairman for the
Federal Election Commission

Enclosures (AOs 1984-11, 1983-47, 1975-44)