



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 3, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-28

Mr. Alton H. (Bill) Starling
10839 Hampton Road
Jacksonville, Florida 32217

Dear Mr. Starling:

This responds to your letter of May 24, 1984, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use of certain statements in your campaign materials.

You state that you are a candidate for the U.S. House of Representatives from the 4th Congressional District of Florida. Commission records indicate that you have filed as a candidate for the Republican nomination in the primary election scheduled for September 4, 1984. Therefore, this opinion is limited to campaign activity with respect to that primary election only. According to your request and additional information you have provided us by telephone and a follow-up letter dated July 26, 1984, you plan to include either or both of the following statements in campaign brochures that you will pass out among voters and mail to a group of your supporters:

Statement #1:

I am a patriotic, conservative, concerned and committed Republican and a strong supporter of President Reagan.

Statement #2:

I am a patriotic, conservative, concerned and committed Republican and a strong supporter of the President's programs.

You indicate that you have not had contact with President Reagan's authorized political committees, or the agents thereof. Furthermore, you state that your brochures will be handed out "door to door" and to the public by your campaign workers; they will be mailed to "key supporters" of your campaign but not to the general public. You indicated by telephone that you

will not be engaging the services of a commercial vendor to make the mailings and will be using a mailing list which you developed. The issue presented by your request is whether payments for campaign materials* containing these statements would constitute contributions to, or expenditures on behalf of, the candidate to whom reference is made.

The Act defines the term "contribution" as any gift, subscription, loan, advance, or deposit of money or anything of value made by any person "for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A)(i). The Act and Commission regulations also state that payments by a candidate (or by the candidate's authorized committee) of the costs of the candidate's campaign materials that include information on or any reference to any other candidate for Federal office, and which are used in connection with volunteer activities (including handbills and brochures), are not a contribution to the candidate so referred to, provided that the payment is not for the use of, inter alia, direct mail or similar types of general public communication or political advertising. 2 U.S.C. 431(8)(B)(xi) and 11 CFR 100.7(b)(16), 100.8(b)(17). In this context, the term "direct mail" is defined as "any mailing(s) by commercial vendors or mailings made from lists which were not developed by the candidate." 11 CFR 100.7(b)(16). Because your proposed activities do not fall within the meaning of direct mail, this "coattail exception" to the definition of contribution and expenditure would apply to your campaign materials, and the cost of such materials would not be viewed as a contribution to, or expenditure on behalf of, President Reagan.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transactions or activities set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Lee Ann Elliott
Chairman for the
Federal Election Commission

P.S. Commissioner Harris voted to approve this opinion and stated that he may file a concurring opinion at a later date.

* The Commission assumes that by "campaign materials" you mean materials that principally make explicit references to your campaign for nomination for election to Congress and that contain only incidental references to any other Federal candidate.