

Republican
National
Committee

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June 27, 1995

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 22306

AOR 1995-25

Dear Mr. Noble:

The Republican National Committee ("RNC") requests an advisory opinion from the Federal Election Commission clarifying the impact of its regulations at 11 C.F.R. 106.5 on national committee legislative media advertising. Specifically, the RNC seeks Commission determination on whether the requirements to allocate administrative costs at 11 C.F.R. 106.5 (a) and (b) apply to these media outlays, as well as to associated disbursements.

Currently, the RNC plans to produce and air media advertisements (radio and television) on a series of legislative proposals being considered by the U.S. Congress (House and Senate). The ads will highlight a number of legislative issues ranging from the balanced budget debate to welfare reform. The purpose of these ads would be to inform the American people on the Republican and Democratic positions on these issues as well as attempt to influence public opinion on a particular legislative proposal. The obvious goal would be to gain popular support for the Republican position on a given legislative measure. The practical effect of this media effort by the RNC would be to influence the public's positive view of Republicans and their agenda.

This request is predicated on the following assumptions:

1. There may or may not be a reference to a federal officeholder who has also qualified as a candidate for federal office.
2. If there is reference to a federal officeholder who is also a federal candidate there will *not* be any express advocacy of that officeholder's election or defeat *nor* will there be any "electioneering message" or reference to federal elections.
3. If there is a "call to action" it will be to urge the viewer or listener to contact that federal officeholder urging support for or defeat of a particular piece of legislation.

4. The appropriate Federal Communications Commission disclaimer identifying the RNC as sponsor will be included within each advertisement.

5. The RNC will allocate the salaries of employees associated with this media effort based upon 11 C.F.R. 106.5.

6. The RNC will report this media activity and its associated expenses as appropriate on financial disclosure reports to the FEC.

The Commission's regulations at 11 C.F.R. 106.5(a)(1) require political committees that have established both federal and non-federal accounts to allocate expenses between those accounts as delineated by the FEC rules. Those allocation regulations specify that for each administrative expense of the national committees at least 60 percent of each bill must be paid out of federal funds in non-presidential years 11 C.F.R. 106.5(b)(2)(ii). Obviously, a disbursement that is viewed as completely non-federal would not require any federal allocation. Likewise, any outlay viewed by the Commission as exclusively federal would necessitate payment solely out of federal funds.

The question presented to the Commission for resolution is whether the costs associated with the proposed legislative media advertisements described above are held by the Commission to be exclusively non-federal outlays or are defined as "administrative expenses" subject to a minimum 60 percent federal allocation by the RNC.

Based upon its past practices, the RNC would have determined that these proposed advertisements would be administrative expenses under the FEC's allocation regulations requiring a minimum federal payment of sixty percent for all costs associated with producing and airing such ads. The Democratic National Committee ("DNC"), however, holds a different view.

The DNC apparently takes the position that ads similar to those proposed by the RNC are outside the FEC's regulatory jurisdiction. The DNC's FEC reports indicate that the \$5 million 1994 DNC media campaign on behalf of health care reform was paid exclusively out of non-federal funds.

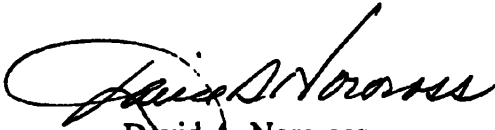
The RNC ads will focus on federal legislation as did the DNC health care spots. It is impossible, however, to determine what effect these types of ads have on the electability of candidates at the federal, state and local level.

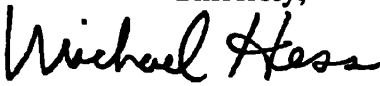
It is precisely because of the difficulty in assessing the actual political impact on federal elections based upon this kind of party activity that the Commission established a fixed allocation formula to be applied to national committee administrative expenses. It was the FEC's attempt to assure that so-called "soft money" (non-federal individual, corporate and union party donations) was not used in connection with federal election related activities by making some basic assumptions on the role of national party committees. FEC regulations make it clear that national party committees are simply not allowed


under FEC allocation regulations to isolate certain activities from the FEC's allocation requirements unless the activity is *exclusively* non-federal, for example contributing to state and local candidates. The practical effect of the Commission's allocation rules is to treat outlays by political party committees differently than those of non-political organizations simply because parties have a political purpose and structure.

Based upon this rationale, the RNC has in the past taken the view that advertisements such as the ones proposed would appropriately be defined as joint federal/non-federal administrative costs. The DNC's contrary interpretation has generated this advisory opinion request. It is imperative that the national committees play by the same rules. Because "soft money" is involved in the implementation of this legislative ad campaign and because the implementation of this advertising effort is imminent, the RNC respectfully request an expedited Advisory Opinion by the Commission. Simply stated, can the RNC subsidize its legislative ad campaign exclusively with non-federal dollars as the DNC apparently did in 1994 or is the RNC required to allocate these media expenses based upon the fixed percentage formula delineated in FEC regulations at 11 C.F.R. 106.5?

Thank you for your consideration of this matter.


David A. Norcross
General Counsel

Sincerely,

Michael A. Hess
Chief Counsel


Thomas J. Josefiak
Deputy Chief Counsel