

DEMOCRATIC NATIONAL COMMITTEE

FEDERAL ELECTION COMMISSION SECRETARIAT

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July 10, 1995

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Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Comments On
AOR 1995-25

JUL 11 5 12 PM '95

Re: Advisory Opinion Request 1995-25

Dear Mr. Noble:

The Democratic National Committee ("DNC") submits these comments on the above-referenced advisory opinion request filed by the Republican National Committee ("RNC") on June 27, 1995. The RNC's letter does not provide a complete description of all facts relevant to the transaction with respect to which the request is purportedly made. Further, the letter appears to be, in substantial part, an attempt to have the Commission rule on past activities of a third party, namely, the DNC--activities which the RNC has in any event grossly mischaracterized. For these reasons, the RNC's letter clearly does not qualify as a proper advisory opinion request under the Federal Election Campaign Act of 1971, as amended (the "Act") and the Commission's regulations. Accordingly, unless the deficiencies in the request are corrected, the Commission should not issue any advisory opinion in response to this request.

The Commission's regulations require that:

Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made.

11 C.F.R. § 112.1(c). The regulations further provide that:

Requests presenting a general question of interpretation, or posing a hypothetical situation, or regarding the activities of third parties, do not qualify as advisory opinion requests.

11 C.F.R. § 112.1(b) (emphasis added).

First, to the extent that the RNC is attempting to obtain

guidance about some future advertisements it plans to run, its letter falls woefully short of providing a "complete description of all facts relevant to the specific. . . activity" it is planning to undertake, *id.* § 112.1(c). In particular, the RNC has set forth a series of confusing and potentially contradictory general characterizations of its "proposed" advertising without providing any actual proposed text for the advertisements. The letter indicates that the advertisements would "highlight" legislative issues, but at the same time suggests that there may be an explicit reference to federal candidates; that an "obvious goal" of the advertisements would be to "gain popular support" for the Republican position on a given legislative measure; and that the "practical effect of this media effort by the RNC would be to influence the public's positive view of Republicans and their agenda." The letter does not indicate one way or the other whether there will be any call to action but suggests that "if there is" it will be to urge the viewer or listener to contact a federal officeholder urging support or opposition to a "particular piece of legislation." It is impossible to draw any legal conclusions about advertising described in such generalities, without the submission of a specific sample text and an indication of the timing and context of the advertising program. See, e.g., Advisory Opinion 1984-15.

Second, the RNC's request appears to represent, in large part, an attempt to have the Commission rule on past activities of the DNC. The Commission's regulations, of course, expressly preclude the use of an advisory opinion request to obtain such a ruling "regarding the activities of third parties," 11 C.F.R. § 112.1(b). More critically, the RNC has grossly mischaracterized the DNC's position on the issue the RNC's request purports to raise.

The RNC asserts that, while the RNC has taken the position that advertisements such as the ones it describes are subject to allocation between federal and non-federal accounts as generic voter drive activity under 11 C.F.R. § 106.5(a), the DNC has taken a "contrary interpretation." (RNC June 27 letter, p. 3). That assertion is simply false. In the past several years, the DNC and/or its state parties have in fact run advertising that fits the description set forth in the RNC's letter---specifically attacking the Republican and supporting the Democratic position on particular legislative proposals in an effort to "influence the public's positive view" of Democrats and their agenda (RNC June 27 letter, p. 1). In all cases the costs of that Democratic advertising have been allocated between federal and non-federal accounts as generic voter drive activity under 11 C.F.R. § 106.5(a). It is simply not true, therefore, that the DNC "apparently takes the position that ads similar to those proposed by the RNC" can be paid for entirely with non-federal funds.

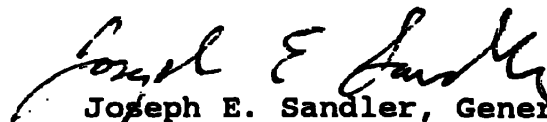
The RNC letter refers to a "\$5 million DNC media campaign on behalf of health care reform." The DNC did establish a separate

non-federal account to pay the costs of certain specific activities, including some broadcast advertising, aimed exclusively at having members of the public contact Members of Congress to express support for the Clinton Administration's health care reform proposal. The context and timing of this advertising left no doubt that it constituted part of a grassroots lobbying campaign having essentially nothing to do with "influencing the public's positive view" of Democrats. The DNC's treatment of the costs of this advertising as being outside the scope of the Act was strictly in accordance with past Commission rulings concerning lobbying activity, including lobbying activity by political party committees. See, e.g., Advisory Opinion 1982-14.

The RNC is certainly entitled to request an advisory opinion on the proper treatment, under the Commission's rules, of the costs of a particular proposed advertising program. See, e.g., Advisory Opinion 1984-15. But the RNC's June 27, 1995 letter does not represent a proper request. Rather than fully and completely describing what the RNC itself proposes to do, the letter sets forth an incomplete jumble of generalities which the RNC then uses as the basis to try to have the Commission rule on past activities of a third party, the DNC--or, rather, to rule on the RNC's mischaracterization of those activities. In these circumstances, unless and until the deficiencies in its request are corrected, the RNC is not entitled to the issuance of an advisory opinion. See, e.g., Re: AOR 1980-24, 2 CCH Fed. Elec. Camp. Fin. Guide ¶ 6986 (May 9, 1980) (where factual representations in advisory opinion request were incomplete and inaccurate, issuance of an advisory opinion would not be appropriate).

Thank you for your consideration of these comments.

Sincerely yours,



Joseph E. Sandler, General Counsel
Neil P. Reiff, Deputy General Counsel