



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 7, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-41

Robert F. Bauer
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

Dear Mr. Bauer:

This responds to your letter dated October 30, 1995, as counsel for the Democratic Congressional Campaign Committee, who inquires on behalf of Representative Carolyn Maloney and Maloney for Congress, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to Federal preemption of certain reporting obligations of New York State campaign finance laws.

Maloney for Congress (the "Committee") is the principal campaign committee of Carolyn Maloney, a member of the U.S. House of Representatives for the New York 14th Congressional District. She is currently a candidate for re-election. You state that New York law requires all candidates for public office to disclose certain information about polling activity for public reporting purposes. Specifically, the statute requires that any candidate preparing to release poll results to the public must file within 48 hours, with the appropriate New York state regulatory authority, a report which states the poll sample size, the wording of the questions asked, and the full results of the poll. See 9 NYCRR §6201.2.^{1/}

You note that the New York State Board of Elections ("the Board") has taken the position that this reporting requirement applies to Federal, as well as other candidates, and that the Board communicated this position to Ms. Maloney.^{2/} You therefore ask whether the Act, Commission regulations, and prior Advisory Opinions issued by the Commission, indicate that the New York reporting requirement is preempted by Federal law.

The Act states that its provisions and the rules prescribed thereunder, "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. 453. The House committee that drafted this provision intended "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal office and that the Federal law will be the sole authority under which such elections will be regulated." H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 10 (1974). According to the Conference Committee report on the 1974 Amendments to the Act, "Federal law occupies the field with respect to criminal sanctions relating to limitations on campaign expenditures, the sources of campaign funds used in Federal races, the conduct of Federal campaigns, and similar offenses, but does not affect the States' rights" as to other areas such as voter fraud and ballot theft. H.R. Rep. No. 93-1438, 93d Cong., 2d Sess. 69 (1974). The Conference report also states that Federal law occupies the field with respect to reporting and disclosure of political contributions to and expenditures by Federal candidates and political committees, but does not affect state laws as to the manner of qualifying as a candidate, or the dates and places of elections. Id. at 100-101.

When the Commission promulgated regulations at 11 CFR 108.7 on the effect of the Act on state law, it stated that the regulations follow section 453 and that, specifically, Federal law supersedes state law with respect to the organization and registration of political committees supporting Federal candidates, disclosure of receipts and expenditures by Federal candidates and political committees, and the limitations on contributions and expenditures regarding Federal candidates and political committees. Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 51. 11 CFR 108.7(b). The regulations provide that the Act does not supersede state laws concerning the manner of qualification as a candidate or political party organization, dates and places of elections, voter registration, voting fraud and similar offenses, or candidates' personal financial disclosure. 11 CFR 108.7(c). The Commission explained that "[t]hese types of electoral matters are interests of the states and are not covered in the Act." House Document 95-44, at 51.

The Commission has previously concluded that the Act supersedes and preempts state law with respect to the reporting requirements of Federal committees and State committees which engage in Federal activity. See Advisory Opinions 1993-14, 1986-27 and 1978-54. Given this legal authority, the Act would preempt New York State law with respect to the reporting of contributions, disbursements and expenditures, including expenditures for polling activity in Federal election campaigns. New York State may not impose any obligation for reporting Federal contributions, disbursements and expenditures since those obligations fall only within the purview of the Act and Commission regulations. See 2 U.S.C. 434(b) and 11 CFR 104.3. Therefore, the Commission concludes that 9 NYCRR §6201.2 may not be applied to Maloney for Congress, Carolyn Maloney or any other Federal candidate or committee with respect to polling activity that is done as part of a Federal election campaign.

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,

Danny L. McDonald
Chairman

Enclosures (AOs 1993-14, 1986-27, and 1978-54)

1 The cited provision states:

No candidate, political party or committee shall attempt to promote the success or defeat of a candidate by directly or indirectly disclosing or causing to be disclosed the results of a poll relating to a candidate for such an office or position, unless within 48 hours after such disclosure, they provide the following information concerning the poll to the board or officer with whom statements or copies of statements of campaign receipts and expenditures are required to be filed by the candidate to whom such poll relates:

- (a) The name of the person, party or organization that contracted for or who commissioned the poll and/or paid for it.
- (b) The name and address of the organization that conducted the poll.
- (c) The numerical size of the total poll sample, the geographic area covered by the poll and any special characteristics of the population include in poll sample.
- (d) The exact wording of the questions asked in the poll and the sequence of such questions.
- (e) The method of polling-whether by personal interview, telephone, mail or other.
- (f) The time period during which the poll was conducted.
- (g) The number of persons in the poll sample; the numbers contacted who responded to each specific poll questions; the number of persons contacted who did not so respond.
- (h) The results of the poll.

2 In a May 3, 1984 Opinion, the Board stated that section 6201.2 "app[lies] to all campaigns conducted in New York State where the intent is to influence the voters of the state. There are no Federal laws, rules or regulations known to the Board which would supersede the regulation of the New York State Board of Elections." New York Board of Elections 1984 Opinion #1. Furthermore, the Board has previously found that a Federal committee, the Committee to Elect John Bouchard to Congress, was in violation of section 6201.2. See Times Union v. Committee to Elect John Bouchard, New York State Board of Election, Final Determination FC89-7 (September 7, 1990).