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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL*

JAN 18 10 32 AM '96

Harry Browne for President
1500 Adams Ave, Suite 105
Costa Mesa, CA 92626
January 17, 1996

Office of General Counsel
Federal Election Commission
999 E St NW
Washington, DC 20463

To whom it may concern:

Our committee requests an advisory opinion clarifying the possibility of being certified as qualifying for Presidential primary matching funds without actually taking the funds.

Governments and organizations are increasingly using matching funds qualification as a measure of a candidate's viability. Delaware has recently passed a law that automatically includes in its primary all candidates who have qualified for matching funds. The Commission on Presidential Debates has specifically mentioned qualifying for matching funds as a criterion for deciding which candidates to include in the debates they sponsor. Many private organizations also use matching funds qualification as a criterion in deciding which candidates to invite to speak at their events.

This development is particularly distressing to our committee because we qualify to receive matching funds but are ideologically opposed to taking them. As a result, we are left with the difficult quandary of having to choose between our principles and our ability to effectively participate in the political process.

We, therefore, have several questions that we would like answered to explore whether there is an acceptable alternative.

- 1) Can our committee make a submission, as outlined in 11 CFR 9033.1, and 9033.2 and have the Commission make a determination, as outlined in 11 CFR 9033.4, as to whether or not we have satisfied the minimum contribution threshold requirements without actually accepting any of the matching funds to which we would be entitled?
- 2) If the answer to question 1 is yes, can our committee also make non-threshold submissions, as outlined in 11 CFR 9036.2, to determine more precisely how much money our committee would have been entitled to without accepting any of the matching funds to which we would be entitled?
- 3) Assuming the answer to question 1 is yes and that our committee qualifies for matching funds without taking them, would our committee be guaranteed no liability for repayment of funds under 11 CFR 9038.2, since we received no funds in the first place?
- 4) Assuming the answers to questions 1 and 3 are yes and that our committee qualifies for matching funds without taking them, are there any other regulatory burdens which our committee could avoid that would normally be expected of a committee receiving matching funds? For example, can we avoid the audit outlined in 11 CFR 9038.1?

Every day that this issue goes unsettled we miss important opportunities, so we would appreciate receiving as prompt a reply as possible. If you need any clarification, please contact me at (202) 986-3580.

Yours,



Stuart Reges
Custodian of Records



FEDERAL ELECTION COMMISSION

Washington, DC 20463

January 26, 1996

Stuart Reges, Custodian of Records
Harry Browne for President
1500 Adams Ave.
Suite 105
Costa Mesa, CA 92626

Dear Mr. Reges:

This refers to your letter dated January 17, 1996, on behalf of Harry Browne for President ("the Committee"), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to qualifying for matching funds without subsequently accepting them.

According to records on file at the Commission, Harry Browne is seeking the nomination of the Libertarian Party for President of the United States. You indicate that the Committee has received sufficient contributions in enough states to qualify to receive matching funds, but is ideologically opposed to taking them. You note, however, that governments and organizations are increasingly using matching funds qualification as a measure of a candidate's viability, e.g., for ballot access in Delaware, for inclusion in presidential debates, and as a criterion in deciding whom to invite as a speaker. Hence, you wish to explore the possibility of Mr. Browne qualifying for matching funds, without accepting them and without being subject to other requirements.

Specifically, you ask whether the candidate may make a submission for matching payments, pursuant to 11 CFR Part 9033, and have the Commission make a determination as to whether the Committee has satisfied the minimum threshold requirements without accepting any matching funds; whether the Committee, assuming it initially qualifies for matching funds, may make non-threshold submissions under 11 CFR 9036.2 to determine how much more money the Committee would have been entitled to; whether the Committee would be guaranteed no liability for repayment under 11 CFR 9038.2 since it would have received no funds; and whether the Committee would be subject to other requirements including submission to a Commission audit pursuant to 11 CFR 9038.1.

The Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). Commission regulations explain that requests on behalf of a requesting person, such as a committee or corporation, must be made by an "authorized agent of such person." 11 CFR 112.1(a). The request must concern a specific transaction or activity that "the requesting person plans to undertake or is presently undertaking and intends to undertake in the future." An inquiry presenting a general question of interpretation or posing a hypothetical situation does not qualify as an advisory opinion request. 11 CFR 112.1(b). The regulations further explain that this office shall determine if a request is incomplete or otherwise not qualified as an advisory opinion request. 11 CFR 112.1(d).

In order to satisfy the above requirements, a request from the Committee should be submitted by the treasurer, the candidate, or someone specifically designated by them. Moreover, in view of the requirements for qualifying for matching funds, the nature of your request is hypothetical.

Although the Committee may have received a sufficient total of contributions from the requisite number of states to satisfy the eligibility requirements set out at 26 U.S.C. §9033(b)(3) and (4), other requirements must be met in order to qualify for matching funds. Principally, the candidate and his committee must also certify that they will not incur qualified campaign expenses in excess of the limits of 2 U.S.C. §441a(b)(1)(A). 26 U.S.C. §9033(b)(1). In addition, the candidate must agree that he has the burden of proving that the campaign's disbursements are qualified campaign expenses, and that he will obtain, keep, and furnish documentation and other information as to receipts and disbursements. 26 U.S.C. §9033(a); 11 CFR 9033.1. Based on the foregoing, this office has determined that your request is not qualified as an advisory opinion request at this time.

If you have any questions about the advisory opinion process or this letter, please contact the undersigned.

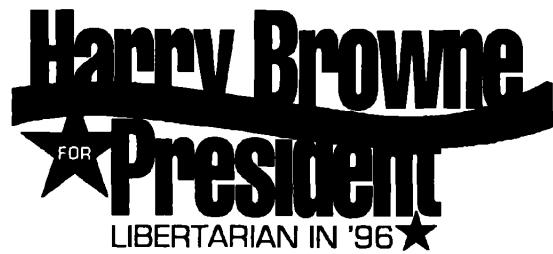
Sincerely,

Lawrence M. Noble
General Counsel

By:

N. Bradley Litchfield
Associate General Counsel





REC'D
FEB 20 9 33 AM '96

February 15, 1996

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COUNSEL

FEB 20 10 27 AM '96

N. Bradley Litchfield
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

AOR 1996-07

Dear Mr. Litchfield:

I am writing in response to your letter of January 26, 1996.

First, let me verify that Stuart Reges was acting as my agent in writing his letter of January 17, 1996, requesting an advisory opinion about whether or not we can apply for Presidential matching funds without actually taking them. I enclose a copy of his original request.

In your letter you point out that the advisory opinion process cannot be used to answer hypothetical questions. We have, therefore, taken the time to consider more fully exactly what we plan to do.

Harry Browne intends to make the candidate certifications outlined in 11 CFR 9033.1 and 11 CFR 9033.2 and our committee intends to make a threshold submission as outlined in the same sections, provided that we can do so without actually taking the matching funds to which we would be entitled, and provided that we would not be subject to any repayment of funds as outlined in 11 CFR 9038.2.

Therefore, since we intend to take these actions, we would appreciate receiving answers to our questions 1 and 3. We similarly would like an answer to question 4 because although we intend to proceed whether or not we are subject to the audit outlined in 11 CFR 9038.1, we would like to be able to plan accordingly.

N. Bradley Litchfield
February 15, 1996
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We have not at this time decided whether or not to make non-threshold submissions as outlined in 11 CFR 9036.2, so please ignore question 2 of our original request.

I look forward to your reply.

Sincerely,



Sharon Ayres
Treasurer

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cc: Stuart Reges