



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 29, 1996

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996- 7

Sharon Ayres, Treasurer
Harry Browne for President
1500 Adams Avenue, Suite 105
Costa Mesa CA 92626

Dear Ms. Ayres:

This responds to your letters dated February 15, and January 17, 1996, concerning the application of the Presidential Primary Matching Payment Account Act ("the Fund Act"), and Commission regulations to a proposal by the Harry Browne for President Committee ("the Committee") regarding its application for matching funds.

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, under the Fund Act, but is ideologically opposed to taking them. You note, however, that State governments and organizations are increasingly using Federal matching funds qualification as a measure of a Presidential 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 that Mr. Browne would seek to qualify for matching funds, without accepting them, and without being subject to other requirements that apply to presidential candidates who qualify for matching funds.

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.

Under the Fund Act and Commission regulations, to be eligible to receive Presidential primary matching funds a candidate shall, in writing—

- (1) agree to obtain and furnish to the Commission any evidence it may request of qualified campaign expenses,
- (2) agree to keep and furnish to the Commission any records, books and other information it may request, and
- (3) agree to an audit and examination by the Commission under section 9038 and to pay any amounts required to be paid under such section. See 26 U.S.C. 9033(a).

Commission regulations further delineate the documentation requirements a candidate must agree to as part of establishing eligibility for matching funds. 11 CFR 9033.1. The Commission will not consider a candidate's threshold submission until that candidate has submitted a candidate agreement that accepts these requirements. See 26 U.S.C. 9033(a) and 11 CFR 9033.1(a)(2). The importance of a candidate's personal assent to these preconditions has been emphasized. See *LaRouche v. Federal Election Commission*, 996 F.2d. 1263, 1266 (D.C. Cir. 1993).

In your request, you state that the candidate is "ideologically opposed" to accepting matching funds. You further state that the campaign's purpose would be to make a threshold submission, as outlined by the regulations, but not to accept the matching payments or become subject to the various conditions described in 26 U.S.C. 9033(a) or 11 CFR 9033.1, 9038.1 and 9038.2, including repayment requirements, agreement to an audit of the campaign, and the obligation to maintain certain documents. The request of the candidate and his committee for matching funds would be only for the limited purpose of satisfying criteria established by other entities for his participation in various campaign events. The Commission concludes that in these circumstances the candidate could not be viewed as having given the necessary assent to the candidate agreement, under 26 U.S.C. 9033(a) and 11 CFR 9033.1(a)(2), and to all the conditions stated therein. Consequently, the Commission may not consider his eligibility for matching funds.

Given that the circumstances you propose could not objectively be considered an assent by the candidate, the Commission could not, therefore, make a determination as to whether the Committee satisfied the minimum threshold for matching funds. Having answered your first question in the negative, a response to your further questions (regarding the Committee's ability to make further submissions, its obligations for repayment of funds, its other obligations such as a Commission audit) is unnecessary.

This response constitutes an advisory opinion concerning the application of the Fund 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,

(signed)

Lee Ann Elliott
Chairman