

ADVISORY OPINION 1975-54

Application of Contribution and Expenditure Limitations to Each Election Held in a State

The Federal Election Commission renders this advisory opinion under 2 U.S.C. §437f in response to a request submitted by Mr. Kent Shearer on behalf of the Utah Republican Central Committee. This request was made public by the Commission and published in the Federal Register on September 3, 1975 (40 FR 40679). Interested parties were given an opportunity to submit comments relating to the requests. No comments were received.

Mr. Shearer seeks an advisory opinion concerning the Utah nominating process. At the respective State Nominating Conventions held by the political parties, primary candidates are reduced to two individuals. If, however, one candidate receives 70 percent of the vote he or she becomes the nominee without a primary. The specific question is whether the limitations on contributions and expenditures contained in 18 U.S.C. §608(b) and (c) would apply separately to each phase of the nominating process (i.e., convention and primary).

The contribution limitations established in 18 U.S.C. §608(b)(1) and (2) apply separately to each election for Senators and Representatives. 18 U.S.C. §608(b)(5). Election, as defined in 18 U.S.C. §591(a) means, inter alia, (1) a general, special, primary, or run-off election or (2) a convention or caucus of a political party held to nominate a candidate. The Commission is of the opinion that a caucus or convention of a political party, such as the primary election but which does not select a nominee is not a separate election. Such a caucus or convention is, in essence, a step in the nominating process and will be considered a part of the primary election. In the event the convention nominates a candidate by the requisite number of votes the nominating process and therefore the primary process ends. Accordingly, in Utah, an individual or political committee may contribute to a candidate up to the applicable limit in 18 U.S.C. §608(b) with respect to the nominating process.

The expenditure limitations in 18 U.S.C. §608(c)(1)(C) and (E) apply "in the case of any campaign for nomination for election" for Senator or Representative. A candidate is, therefore, subject to a single expenditure limitation for the time period during which he or she is seeking the nomination, regardless of whether the process includes a convention, primary or other procedure.

This advisory opinion is issued on an interim basis only pending promulgation by the Commission of rules and regulations or policy statements of general applicability.