



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 11, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-16

Mark A. Siegel
Mark A. Siegel and Associates, Inc
400 N. Capitol Street, N.W., Suite 368
Washington, D.C. 20001

Dear Mr. Siegel:

This responds to your letter of April 9, 1984, requesting an advisory opinion on behalf of the Jim Shannon for Senate Committee concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the status of the Democratic Party State Convention in Massachusetts with respect to the Act's contribution limitations.

You state that the Democratic Party of Massachusetts will hold a state convention on June 8 to endorse a candidate for the Democratic Senate nomination. You further note that any candidate who seeks this endorsement and receives 15 percent or more of the vote for that office may appear on the September 18 state primary ballot. You add that the primary election will "select the Democratic nominee for the general election." As part of your request, you have provided a copy of the charter of the Democratic Party of the Commonwealth of Massachusetts.

You ask whether the Act's contribution limitations for individuals and for multi-candidate political committees apply separately to the state convention, the state primary election, and the general election. See 2 U.S.C. 441a(a)(6).

The Act provides that no person shall contribute more than \$1,000 "to any candidate and his authorized political committees with respect to any election for Federal office... ." 2 U.S.C. 441a(a)(1)(A). It also provides that no multi-candidate political committee shall contribute more than \$5,000 "to any candidate and his authorized political committees with respect to any election for Federal office.... ." 2 U.S.C. 441a(a)(2)(A).¹ The Act defines "election" to include: (1) a general, special, primary or runoff election; and (2) a convention or caucus of a political

¹ See 2 U.S.C. 431(4) and 2 U.S.C. 441a(a)(4) for definitions of a political committee and a multi-candidate political committee.

party which has authority to nominate a candidate. 2 U.S.C. 431(1)(A) and (1)(B). Your request raises essentially the question whether the Democratic Party's state convention has the "authority to nominate a candidate." See also 11 CFR 100.2(e).

The Commission has previously held that the question of whether a party convention has authority to nominate a candidate must be determined from an analysis of state law pertaining to the power and role of a political party convention in the nomination of candidates for Federal office. See e.g. Advisory Opinions 1981-29 and 1976-58. This analysis may also encompass the state party's charter and rules. The Commission's review of Massachusetts law and the Democratic Party charter indicates that the state convention of a major "political party in Massachusetts does not have the authority to nominate candidates for the United States Senate.

Massachusetts law provides that a political party's candidate or nominee for a particular office in the general election is the person who wins that party's primary election by a plurality of the vote. Mass. Gen. Laws Ann. ch. 53, §2 (West 1975). The charter of the Democratic Party of Massachusetts provides for a state convention "for the purpose of endorsing candidates for statewide office" It also provides that any person seeking such endorsement "who receives at least 15 percent of the Convention vote on any ballot for a particular office may challenge the Convention endorsement in a State Primary Election." Only persons who receive this minimum vote can have their names placed on the primary election ballot. See Mass. Gen. Laws Ann. ch. 53, §44 (West 1975). Even if a person did not receive the 15 percent threshold vote at the state convention, under Massachusetts law, he or she could still wage a write-in campaign in the state primary election. See Mass. Gen. Laws Anri. ch. 53, §3 (West 1975). Even if only one candidate receives more than 15 percent of the convention vote, he or she must still win the state primary election by a plurality of the vote. See Hopfmann v. FEC, ____ F.Supp._____, 2 Fed. Election Camp. Fin. Guide (CCH) ¶9203 (D. D.C. 1984).²

The state law and party rules in Massachusetts differ significantly from those in Connecticut and Utah, where the Commission concluded that the party convention was an "election" under the Act. See Advisory Opinions 1978-30 and 1976-58. In Connecticut, state law provided that if no person other than the endorsed candidate received at least 20 percent of the convention vote, no primary election for that office would be held. The endorsed candidate would be deemed nominated. Advisory Opinion 1976-58. In Utah, state law provided that if the endorsed candidate received at least 70 percent of the convention vote, that person became the party's nominee without the need of running in the primary election. Advisory Opinion 1978-30. Massachusetts law contains no similar provisions that create any circumstances in which the candidate endorsed by the convention would become the party nominee without the holding of the primary election for that office. Instead, the state party convention in Massachusetts

² In this case, the plaintiff Alwin E. Hopfmann was a participant in the Massachusetts Democratic Party's pre-primary convention in May 1982. Sen. Edward Kennedy was the sole candidate to receive at least 15 percent of the convention vote for endorsement as the U.S. Senate candidate. His name was the only one placed on the September 1982 primary election ballot. Hopfmann filed a complaint with the Commission in which he alleged that the convention was a separate election under the Act and that Sen. Kennedy and his authorized campaign committee had violated certain reporting provisions of the Act. The Commission dismissed the complaint on the basis that because the convention was not a separate election under the Act, there was no reason to believe a violation had occurred. Hopfmann then filed a civil action in U.S. District Court. The District Court sustained the Commission's action. The case is currently on appeal to the U.S. Court of Appeals for the District of Columbia.

functions similarly to the party conventions in Colorado, Minnesota, and New Mexico, where the Commission found that the conventions were not separate elections for purposes of the Act. See Advisory Opinions 1981-29 and 1978-25.

Accordingly, the Commission concludes that the Democratic Party's state convention in Massachusetts would not constitute a separate election under the Act. See 2 U.S.C. 431(1)(B), 441a(a)(1)(A), and 441a(a)(2)(A). This convention only has the authority to endorse, not to nominate, a candidate and constitutes only a step in the primary election campaign. Undesignated contributions received by or on behalf of the Jim Shannon for Senate Committee prior to the primary, including those received prior to the convention, would therefore constitute contributions with respect to the primary election and would be subject to the contribution limitations, of 2 U.S.C. 441a(a)(1)(A) and 441a(a)(2)(A). See also 11 CFR 102.9(e), 110.1, and 110.2. A separate contribution limitation would apply if Mr. Shannon is also a candidate in the general election. See 2 U.S.C. 441a(a)(6).

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 yours,

(signed)

Lee Ann Elliott
Chairman for the
Federal Election Commission

Enclosures (AOs 1981-29, 1978-30, 1978-25, and 1976-58)