



**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D.C. 20461

**STATEMENT OF COMMISSIONER POTTER  
IN ADVISORY OPINION REQUEST 1992-39**

During the November 12, 1992 discussion of Advisory Opinion Request 1992-39, and as reflected in the subsequent Commission tally vote, the Commission was unable to reach the requisite four vote consensus to provide an answer to the requester in this matter. The request presented the following two issues in light of a Georgia state law mandating a run-off election when no federal candidate receives a majority of the votes cast for the office in the regularly scheduled general election: 1) whether national party and/or state party committees are entitled to additional coordinated party expenditure limits under 2 U.S.C. § 441a(d)(3) for such a new run-off election and 2) whether national party and/or state party committees are prohibited from making any 441a(d)(3) expenditures in any new run-off election (including 441a(d)(3) funds remaining from the previously inconclusive general election).<sup>1</sup>

The General Counsel's draft Advisory Opinion cites as a basis for its conclusion the Commission's regulation

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1. Advisory Opinion Request 1992-39 was made by Jay Velasquez on behalf of the National Republican Senatorial Committee in connection with the Georgia run-off election for the United States Senate. This election is required by state law to take place 21 days after the November 3, 1992 general election in which no candidate for the U.S. Senate seat in Georgia received a majority of the vote.

[11 C.F.R. 100.2(b)(2)] which defines a "general election" as "an election which is held to fill a vacancy in a Federal office (i.e., a special election) and which is intended to result in the final selection of a single individual to the office at stake . . . ." The General Counsel interprets this section of the Commission's regulations in tandem with 11 C.F.R 100.2(b)(1) to limit the definition of "general election" solely to those elections either in even numbered years on the Tuesday following the first Monday in November, or special elections to fill vacancies. I can find no support in the Act for this restrictive definition.

A better view of "general election" would be "any election which may have the legal result of electing a single individual to the office at stake," or similar language. Not only is such a definition consistent with the language of the Act, but it logically follows from the Commission's previous position that special elections, general elections and run-off elections each have a separate \$1,000 limit on individuals, multi-candidate political committees, and other persons pursuant to 2 U.S.C. § 441a(a)(1) and (2). See Advisory Opinions 1986-31 and 1984-42. It seems more than illogical to say that this November 24, 1992 election is merely a continuation of the general election for the purposes of political party limits, but a new and separate election for individual and political action committee contribution purposes. Why should party committee's be the only entities prohibited from treating each election as

distinct?

As a public policy matter I see no harm in allowing a separate and distinct 441a(d) coordinated party expenditure limit for unforeseen "run-off" general elections that have the legal result of electing a single individual to the office at stake, and are in all ways equivalent to any other general election. In fact I believe such a separate limit is beneficial to the political process. First, if a run-off general election is seen as a possibility, a separate and distinct limit encourages candidates to campaign wholeheartedly for the initial contest without holding back 441a(d) funds out of fear of needing them in a second run-off general election. Second, if neither candidate has gained a majority of the votes cast and a new run-off general election is required to be scheduled relatively soon after the inconclusive general election (in the Georgia case before us a mere 21 days separates the inconclusive general election and the new general election), each candidate will quickly need to raise additional funds to communicate with voters. Without funds for campaigning, and for get out the vote projects, the run-off general election may provide a classic case study in low voter turn-out. By placing each candidate on an equal footing and treating each "general election" as distinct with a new 441a(d) limit and no carry over from the previous inconclusive election, candidates may rely on the party funds, instead of spending much of the 21 day election period at private fundraising functions. This is not a mere theoretical proposition: the potential overall 441a(d) limits for each

party in Georgia are \$535,600, more than enough to finance a serious, short, campaign.

Ultimately, these ideas need to be debated and commented upon in a rulemaking. Of necessity, the Act and regulations need to balance the specificity to deal with complicated issues and the breadth to deal with aberrant situations. Unfortunately as written, the present regulatory definition of "general election" does neither. Furthermore, to deny party committees a distinct 441a(d) expenditure limit for this new and decisive election would thwart the intent of the Act as it relates to a group specifically guaranteed a central place in the political process. Finally, I believe that the conclusion of Advisory Opinion 1983-16, which is relied on by the General Counsel here and which in dicta establishes a new contribution limit for individuals and political action committees, but denies such a separate limit to party committees, is illogical and ill-advised. For these reasons, I was not prepared at this time to support the General Counsel's draft in Advisory Opinion 1992-39.



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Trevor Potter  
Commissioner

November 19, 1992