



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 9, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-44

Mr. Robert Henzl
Chairman, Friends of Les Aspin
P.O. Box 211
Racine, Wisconsin 53401

Dear Mr. Henzl:

This responds to your letter dated September 3, 1981, requesting an advisory opinion on behalf of Friends of Les Aspin, the authorized political committee of Representative Les Aspin, concerning application of the Federal Election Campaign Act of 1971, as amended, ("the Act") and Commission regulations to certain activities of the National Conservative Political Action Committee ("NCPAC") and Representative Aspin.

As your request indicates, NCPAC, a multicandidate political committee, announced, by press release dated July 22, 1981, its intention to "alert voters in selected congressional districts to the fact that their Congressman is working against the Reagan tax cut." Voters would be "alerted" by radio campaigns and direct mail programs financed by NCPAC. As a result of NCPAC's radio and direct mail campaigns, the press release gives the targeted Congressmen a choice between supporting the Reagan tax bill or "facing the prospect of defeat in November 1982 by failing to represent the wishes of their constituents." If the Congressmen chose not to support the Reagan bill, NCPAC was "prepared to expose their records... by running additional, harder hitting commercials."

On July 23, 1981, NCPAC contacted Mr. Aspin, one of the fourteen "targeted" Congressmen, by letter, offering to withdraw the planned campaign against him and instead, to run newspaper and radio campaigns "applauding" him if Mr. Aspin announced that he would support the Reagan tax cut. Mr. Aspin, by return letter to John T. Dolan of NCPAC, reiterated his undecided status. On July 29, 1981, Mr. Aspin announced that he would vote against the Reagan tax bill and from July 31 through August 6, 1981, NCPAC ran a series of spot radio commercials advocating the defeat of Mr. Aspin in the next election because of his vote against the Reagan tax cut bill.

You contend that the activities outlined "constitute a contribution of NCPAC to Representative Aspin or to each of his announced opponents" and are therefore subject to the contribution limits of 2 U.S.C. 441a. You ask for a Commission ruling confirming your contention.

The specific issue presented here is whether NCPAC's expenditures for the radio commercials advocating Mr. Aspin's defeat in 1982 constitute a "contribution" to him in view of the correspondence that was exchanged between him and NCPAC.

The Act defines the term "contribution" to include, in pertinent part, "any gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing any election for Federal office...." 2 U.S.C. 431(8)(A). See also 11 CFR 100.7(a)(1). The Act requires that contributions of any type, whether monetary or in kind, be reported by the recipient. If the donor is a political committee, the contribution is required to be reported by both the recipient and the donor. See 2 U.S.C. 434(b) and Commission regulations at 11 CFR 104.3 and 104.13. Contributions made by individuals and political committees are subject to the contribution limitations which appear at 2 U.S.C. 441a(a)(1)-(3).

Section 441a(a)(7) addresses the situation where expenditures may be considered as a contribution to a candidate. It provides that a contribution would include "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents...." 2 U.S.C. 441a(a)(7)(B)(i). The legislative history of 2 U.S.C. 441a(a)(7) indicates that to be considered as a contribution under that definition, an expenditure must "aid a candidate in a manner indistinguishable in substance from the direct payment of cash to a candidate." Conference Report on the Federal Election Campaign Act Amendments of 1976, H.R. Rep. No. 94-1057, 94th Cong., 2d Sess. 59 (1976). The candidate who is aided in such a fashion is thus regarded as having received a contribution from the person making the expenditure. See 11 CFR 109.1(c).

The Commission concludes that the described expenditures made by NCPAC to criticize Mr. Aspin's vote against President Reagan's tax program and to advocate his defeat in the next election do not constitute a "contribution" by NCPAC to Mr. Aspin or his campaign committee under the Act and regulations. It is apparent from the facts presented that NCPAC's expenditures did not involve the acceptance of a gift of "anything of value" by Mr. Aspin or the Friends of Les Aspin, his authorized political committee. See Advisory Opinion 1978-49, copy enclosed. Thus neither Mr. Aspin nor his authorized committee have received a contribution, nor has NCPAC made a contribution to Mr. Aspin, as a result of the NCPAC expenditures described in your request. Accordingly, as regards Mr. Aspin and his authorized committee, there are no reporting obligations nor any charge to contribution limits that result from NCPAC's described activity.

The Commission expresses no opinion as to whether NCPAC made a contribution to any candidate who may oppose Mr. Aspin in a future election since Mr. Aspin lacks standing to ask that question. 11 CFR 112.1(b). In addition, the Commission expresses no opinion as to the application of any other statute to this situation, e.g., 18 U.S.C. 201, since its advisory opinion authority is limited to the Act and related public financing statutes. 2 U.S.C. 437f(a).

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,

(signed)

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosure (AO 1978-49)