



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 13, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-9

Ms. Rosemary Berlemann
Treasurer
Arizonans For Life
5338 W. Vogel Avenue
Glendale, Arizona 85302

Dear Ms. Berlemann:

This responds to your letter of January 29, 1980, requesting an advisory opinion on behalf of Arizonans for Life ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended (the "Act"), to the expenses of a mailing by the Committee.

You state that the Committee mailed a letter on December 31, 1979. The letter contained statements* relating to Senator Edward M. Kennedy's candidacy for President, and how such candidacy might affect "the outcome of our own anti-abortion fight." The letter includes no other reference to Senator Kennedy or any other candidate. Under these circumstances you ask whether the costs of printing and mailing this letter should be reported by the Committee as an "independent expenditure."

* You make specific reference to paragraph three of the letter which states:

Since Senator Kennedy announced his candidacy for President, we have to admit that he will have an enormous affect on the outcome of our own anti-abortion fight. "Lifeletter" claims that Edward Moore Kennedy 'could solve the abortion question if he wanted to.' I agree. But, on the record he has been the most formidable and effective pro-abortion leader in the U.S. Senate. Regardless of his avocations, his stated intentions on nationalized health care, taxes, national security, etc., we believe that if Senator Kennedy becomes President he can make or break us on the abortion front. Is it possible that Senator Kennedy's mind might be changed on this vital issue?

Under the Act, an independent expenditure is defined as "an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate." 2 U.S.C. 431(17). Since the letter clearly identifies Senator Kennedy as a presidential candidate and there are no facts in the request which suggest that the letter was prepared or distributed in cooperation or consultation with Senator Kennedy or any authorized committee or agent, the issue raised in your request is whether the text of the letter expressly advocates the election or defeat of Senator Kennedy.

Commission regulations define the phrase "expressly advocating" to include any communication containing a message advocating election or defeat which contains words of advocacy such as, but not limited to: "vote for," "elect," "support," "cast your ballot for," or "Smith For Congress"; or, conversely, "vote against," "defeat," or "reject." 11 CFR 109.1(b)(2). See also Buckley v. Valeo, 424 U.S. 1, at 78-80 (1976). Accordingly, because the letter does not include any message which expressly advocates the election or defeat of Senator Kennedy, or any words of advocacy exhorting readers to vote for or against the identified candidate, the Commission concludes that the cost of printing and mailing the letter need not be treated or reported by the Committee as an "independent expenditure" under 2 U.S.C. 434(b)(6)(B)(iii).

Since the Act requires political committees to report all their disbursements, the Committee should report those costs as disbursements pursuant to 2 U.S.C. 434(b)(4)(H). The recipient of any Committee disbursement in an aggregate amount exceeding \$200 within calendar year 1980 is required to be identified by name and address together with the date, amount, and purpose of the disbursement. 2 U.S.C. 434(b)(6)(B)(v).

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)

Robert O. Tiernan
Chairman for the
Federal Election Commission