



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 5, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1993-2

Robert F. Bauer
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

Dear Mr. Bauer:

This responds to your letter dated January 29, 1993, requesting an advisory opinion on behalf of the Democratic Senatorial Campaign Committee ("the DSCC") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the application of party coordinated expenditure limits to a special Senatorial election together with any run-off.

After Senator Lloyd Bentsen's nomination as Secretary of the Treasury in December 1992, the Governor of Texas appointed an individual as an interim Senator until a special election is held. Candidates from all parties, including any independents, will compete in this election. Under Texas law, if no candidate receives a majority of votes in the special election, a run-off between the top two finishers will occur to determine who will hold the seat. See Election Code 2.021, 2.023, 203.003, and 204.005. The winner will serve out the balance of Senator Bentsen's term, which expires in January 1995. The special election has been scheduled for May 1, 1993.

The DSCC, as agent for the State Democratic Committee of Texas and the Democratic National Committee, will make coordinated expenditures in connection with the impending Texas Senate race pursuant to 2 U.S.C. 441a(d)(3). In view of the possibility that there will be a run-off, you ask whether, under section 441a(d), there is a single expenditure limitation on parties supporting candidates in a special election or, in the alternative, a separate limit for a run-off.

The Act and regulations provide that political party committees may make limited expenditures in connection with the general election campaign of candidates for Federal office. 2 U.S.C.

441a(d)(1); 11 CFR 110.7(b)(1). The national party committee (including any designated agent of the national committee) and state political party committee (including subordinate state committees) may each make expenditures in connection with the general election campaign of a Senatorial candidate in that state who is affiliated with such party. 2 U.S.C. 441a(d)(3); 11 CFR 110.7(b)(1) and 110.7(a)(4). These two limits (one for the national and one for the state) are set by a formula contained in the Act based on voting age population of the state. 2 U.S.C. 441a(d)(3)(A) and 441a(c); 11 CFR 110.7(b)(2)(i) and (c), and 110.9(c).

The Act defines "election" to include a general election, but does not separately define the term "general election." See 2 U.S.C. 431(1). Commission regulations, however, define "general election" to include an election which is held to fill a vacancy in a Federal office and which is intended to result in the final selection of a single individual to the office at stake. 11 CFR 100.2(b)(2). The regulations also provide that a special election is held to fill a vacancy and may be a primary, general, or run-off election.

The Commission has previously addressed the question of whether an election following what we considered to be a special general election would be considered a separate general election or a continuation of the general election for the purposes of 2 U.S.C. 441a(d). Advisory Opinion 1983-16. In that situation, the State of California held a "special primary" to fill a vacancy for a House seat. Under California law, all candidates of whatever affiliation ran against each other. If any candidate received a majority, he or she was declared the winner. If no candidate received a majority, a subsequent election was held and the candidates were limited to the top vote getter in each "political party or political body." The Commission determined that the first election, although it was labeled a "special primary," fit the definition of "general election" because it was held to fill a vacancy in a Federal office (i.e., a special election) and was intended to result in a final selection of a single individual. 11 CFR 100.2(b)(2). The Commission noted that this was consistent with a conclusion of a California appellate court in a 1978 decision.

The Commission concluded that the run-off was not a separate or additional general election allowing for a new 441a(d) limit, and that only a single set of 441a(d) limits was allowable, but that it could be utilized for both the first and second elections, i.e., the general and the run-off.

The Commission concludes that there is no practical difference between the situation presented in Advisory Opinion 1983-16 and the situation presented in Texas. Thus, there will be one section 441a(d) limitation applicable to both the two special elections in Texas.

As noted in Advisory Opinion 1983-16, this conclusion does not change the status of the run-off election, if it is held, as a separate election for the purposes of the contribution limits in 2 U.S.C. 441a(a). These limits apply with respect to "any election" or "each election," and do not relate specifically to the determination of what constitutes a general election or a "general election campaign" for the purposes of section 441a(d). Compare 2 U.S.C. 441a(a)(1), (2), and (6), to 2 U.S.C. 441a(d).

The legislative history of the Act further supports the separate treatment and interpretation given to contribution limits under 2 U.S.C. 441a(a) and coordinated expenditure limits under 2 U.S.C. 441a(d). The Conference report for the 1976 amendments explains section 441a(d) as follows:

This limited permission allows the political parties to make contributions in kind by spending money for certain functions to aid the individual candidates who represent the party during the election process. Thus, but for this subsection, these expenditures would be covered by the contribution limitations stated in subsections (a)(1) [section 441a(a)(1)] and (a)(2) [441a(a)(2)] of this provision.

H.R. Rep. No. 1057, 94th Cong., 2d Sess. 59 (1976). This explanation separates the limited permission of party expenditures in 2 U.S.C. 441a(d) from the contribution limitations of 2 U.S.C. 441a(a). Furthermore, it indicates that section 441a(d), unlike section 441a(a), addresses the election process, rather than specific selection points within the process. See 11 CFR 110.1(b)(2), (b)(3)(i), and (j)(1); 110.2(b)(2), (b)(3)(i), and (i)(1).

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)

Scott E. Thomas
Chairman

Enclosure (AO 1983-16)