FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 21, 1978

AO 1978-9

Mr. Ralph R. Brown
McDonald, Keller & Brown
502 15th Street
Dallas Center, Iowa 50063

Dear Mr. Brown:

This responds to your letter of January 27, 1978, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the Republican State Central Committee of Iowa. Your questions relate to contributions to and expenditures on behalf of candidates for Federal office by the Republican State Central Committee ("State Committee"), by various county central committees ("county committees"), and by certain party auxiliary bodies and fall into four categories. Each question will be restated and discussed in sequence.

1. You first ask whether contributions to candidates for Federal office by the State Committee and by the various county committees in Iowa must be considered to be made by one political committee and therefore aggregated under a single contribution limit.[1]

The status of political committees, for the purpose of determining applicable contribution limitations, is governed by 2 U.S.C. 441a(a)(5), which provides that all contributions by political committees which are "established or financed or maintained or controlled by any . . . person . . . including any parent, subsidiary, branch, division, . . . or local unit of such . . . person, or by any group of such persons" are subject to a common contribution ceiling. Recognizing the general applicability of the language of 441a(a)(5) to political party committees, Congress carved out a specific exception in 441a(a)(5)(B) which gives separate political committee status to "a single political committee established or financed or maintained or controlled by a national committee of a political party and (to) . . . a single political committee established or financed or maintained or controlled by a State committee of a political party . . ." The Act does not address the issue of

[1] This part of the opinion addresses those county committees which are "political committees" within the meaning of 2 U.S.C. 431(d). The response to question 3 addresses the issues raised in your request concerning county committees and other party units which are not necessarily statutory "political committees".

political party committees at the county or other subdivisional level of a State, and the legislative history of 441a is unclear on the subject.[2]

Commission regulations interpreted the Act and the legislative history by setting forth a presumption which is, as you have noted in your request, that:

> All contributions made by the political committees established, financed, maintained, or controlled by a State party committee and by subordinate State party committees shall be presumed to be made by one political committee. 11 CFR 110.3(b)(2)(ii)

However, the regulations go on to state that the presumption shall not apply if:

> (A) The political committee of the party unit in question has not received funds from any other political committee established, financed, maintained, or controlled by any party unit; and
>
> (B) The political committee of the party unit in question does not make its contributions in cooperation, consultation, or concert with, or at the request or suggestion of any other party unit or political committee established, financed, maintained, or controlled by another party unit. 11 CFR 110.3(b)(2)(ii)

For example . . .

> A State committee and any subordinate committee able to demonstrate independence under the criteria of 110.3(b)(2)(ii) may each contribute $1,000 ($5,000 if a multi-candidate committee) to a candidate for each election. 11 CFR 110.3(b)(3)(ii)

---

[2] The so-called "antiproliferation" language of 441a(a)(5) appeared in both the Senate and House versions of the 1976 Amendments to the Act. The report accompanying the Senate bill stated: "This rule, however, does not apply to transfers of funds between political committees raised in joint fundraising efforts, or to national, state, district, or local committees of political parties". (Senate Report No. 94-677, 94th Cong., 2d Sess., 9-10 (1976)). The House report stated the exception to the rule as follows: "However, all political committees set up by a national political party would be treated as a single political committee for the purpose of . . . (contribution limitations). Moreover, all political committees set up by a State political party or by county or city parties would be treated as a single political committee for the purposes of . . . (contribution limitations)." (House Report No. 94-917, 94th Cong., 2d Sess. 6, (1976)).

The Conference Report stated that the conference substitute generally followed the Senate bill with respect to limitations on contributions by any person and by any multi-candidate political committee. (Conf. Report No. 94-1057, 94th Cong. 2d Sess., 57 (1976)). However, the Report further stated that the conference substitute was the same as the provision of the House amendment with respect to the anti-proliferation rules as they applied to the segregated funds of corporations and labor organizations. The Conference Report itself was silent on the subject of local party committees: ". . . contributions to a candidate or a political party or by the political committees of a State committee of a political party are treated separately and are not regarded as contributions by one committee." (Conf. Rpt. No. 94-1057, 58 (1976)).

In your request you state that the State Committee and the 99 county committees are created by Iowa statutes. You further explain that the county committees are, by statute, "separate and independent" from the State Committee in that each county committee elects its own officers and adopts its own constitution and by-laws. You also indicate that the State Committee does not "mandate or have any influence over the expenditures of the county central committee's funds, and any contributions from the county committees to federal candidates are not made in cooperation, consultation or concert with, or at the request or suggestion of, the Republican State Central Committee."

You indicate that the State Committee each year adopts a budget to fund party operations during the coming year and that a percentage of the budget is assigned to each county, "not county committee". You further represent that the bulk of the State Committee's receipts come from individuals residing within the various counties, not from the county committees. You also indicate that many county committees send funds from their own treasuries to the State Committee but that these funds are "not deposited in the federal account". Regarding the Federal account, you enclose as part of your request a copy of a letter dated July 18, 1977, addressed to the Staff Director of the Commission, which states in pertinent part that,

> [U]nder Iowa law, taxpayers may indicate that one dollar of their income tax liability be designated as a "check off" to the political party of their choice. The State Comptroller remits these funds directly to the state party organization. The money then is deposited -- as required by State law -- in a separate, segregated account into which no other funds may be deposited, The Republican State Central Committee of Iowa chose to utilize this separate income tax checkoff account as the separate account for federal purposes. ...[u]nder State law the income tax checkoff funds may be used in state or federal elections, in the discretion of the state central committee.

Finally, you state that the county committees do not receive funds from the State Committee with the exception of funds raised through joint fundraising and that in 1977 only $13,949 resulting from such fundraising was transferred to county committees out of total State Committee expenditures of over $393,000.

Based upon the facts that contributions by the county committees to candidates for Federal office are not made in cooperation, consultation or concert with, or at the request or suggestion of, the State Committee, and that the county committees receive no funds from the State Committee (with the exception of the transfer of funds raised through joint fundraising, which is specifically permitted by 2 U.S.C. 441a(a)(5)(A)), it is the Commission's opinion that the presumption in 110.3(b)(2)(ii) does not apply.

Based upon your further representations that the county committees in Iowa are created by statute and are not established by the State Committee and that each county committee elects its own officers[3] and adopts its own constitution and by-laws and thus is not controlled by the

[3] While we note that, under certain circumstances, the State Committee plays a role in the removal of a county committee Chairman or Co-Chairman for failure to fulfill the duties of the office, the primary mechanism for

State Committee, the Commission concludes that the county committees are separate political committees for the purpose of the contribution limits set forth in 441a(a)(1) and (2). This conclusion, however, does not preclude any future Commission determination that, notwithstanding the provisions of Iowa statute, the State Committee in fact exerts control over the manner in which county committees conduct their affairs.

2. You have also asked whether various party auxiliary bodies may be regarded as separate from the State Committee and thus have separate contribution limits under 2 U.S.C. 441a(a). You indicate that the statute which creates the State Committee empowers it "to provide for the governing of party auxiliary bodies" and that the by-laws of the State Committee specifically speak of the Federation of Republic women, the Young Republicans, and the College Republicans. The relevant by-laws of the State Committee provide that each body "shall retain its individual organization and identity". However, the by-laws also state that these auxiliary bodies shall carry on their political work "with relationship to the Republican Party of Iowa and shall assist the Republican State Central Committee in election campaigns", and that these auxiliary bodies "may conduct their own finance campaigns with the consent of the Republican State Central Committee." We also note that the by-law revisions adopted by the State Committee on June 28, 1978, state that it shall be the duty of the Co-Chairman of the State Committee to "coordinate the activities of the auxiliaries with the (State) Central Committee." Thus, it appears that these organizations are established, financed, maintained or controlled by the State Committee to engage in political activity among specific constituencies, i.e., women, young people, and college students. The Commission concludes, therefore, that auxiliary bodies and the State Committee would be treated as a single political committee and would share a common contribution limit under 2 U.S.C. 441a(a).

3. You have also asked whether each of the described party units can contribute up to $1,000 to candidates for Federal office without becoming subject to the reporting requirements of the Act. Any county committee or auxiliary body may contribute up to an aggregate $1,000 in a calendar year to candidates for Federal office without being required to register and report as a "political committee" under the Act. See 2 U.S.C. 431(d) and 433. Any such contribution would have to be lawful under the Act.[4] However, contributions from any county or auxiliary unit would count against the State Committee's limits under 441a only if the county or auxiliary unit is a "political committee," and then only if this political committee is established, financed, maintained or controlled by the State Committee. This conclusion is based on two reasons. First, the anti-proliferation clause of 441a refers solely to political committees except in the specific case of separate segregated funds of corporations, unions, and other organizations regulated by 2

---

removal of county officers is through action of the county committee itself. (Article VI, Sec. 3, Constitution of the Republican Party of Iowa).

[4] Certain contributions in connection with Federal elections are prohibited under 2 U.S.C. 441b, 441c, 441e, and 441f. County or auxiliary party units may not be conduits for passing along to candidates for Federal office any contribution which may not be made directly to those candidates. In particular, contributions to party units by individuals, committees or other persons which contributions are in any way earmarked on behalf of a candidate for Federal office must be included in the contribution limit of the individual, committee, or person. 2 U.S.C. 441a(a)(8); 11 CFR 110.6. Furthermore, the party units may not make "contributions" to Federal candidates if they have not organized pursuant to 11 CFR 102.6 but have accepted contributions prohibited by the Act. See Advisory Opinions 1977-65, 1976-110, copies enclosed.

U.S.C. 441b. See 441(a)(5). Under general rules of statutory construction,[5] the inclusion of separate segregated funds in the anti-proliferation clause regardless of their status as a political committee under 431(d), must be read as an exclusive exception. Other exceptions may not be inferred, especially in light of the unambiguous reference to "political committees" in the general rule of the clause.

This statutory interpretation is buttressed by the second reason for excluding non-political committees from 441a(a)(5). There is a demonstrable bias within the Act in favor of political party organizations. See 2 U.S.C. 441a(d). Congress consciously sought to strengthen the role of parties in the electoral process.[6] The Commission, therefore, will avoid rulings which unjustifiably discourage party activity, especially at the local level.[7] Furthermore, Congress has articulated in other parts of the Act a desire to place the fewest restrictions and administrative burdens on those groups that are least likely to need them, i.e., local political organizations which are either primarily involved in State and/or local elections or which are active in campaigns for Federal office, but on a very limited or seasonal basis. Consequently, the Commission has broad discretion to waive all reporting requirements for essentially local groups even though they may have made expenditures to influence Federal campaigns in excess of $1,000 and would otherwise be liable to report as political committees. 2 U.S.C. 436(b); 11 CFR 104.9. In light of this laissez faire attitude, it would be inconsistent to require State party committees to somehow monitor local party units which undertake such limited Federal election activity that they do not even meet the statutory definition of "political committee."

Contributions to a county or auxiliary party unit are reportable by the State Committee if the unit is actually a fundraising agent for the State Committee. In that event, the county or

---

[5] 2A. Sutherland Statutory Construction, "Expresio unius est exclusio alterius," 47.23-27.25 (1973).

[6] The Senate Report on the 1974 Amendments to the Act clearly outlined the contemplated role of parties under the election law reforms:

> "Thus parties will play an increased role in building strong coalitions of voters and in keeping candidates responsible to the electorate through party organization.
>
> "In addition, parties will continue to perform crucial functions in the election apart from fundraising, such as registration and voter turnout campaigns, providing speakers, organizing volunteer workers and publicizing issues."
>
> S. Rept. No. 93-689, 93d Cong. 2d Sess., 8 (1974) (emphasis added).

[7] Testimony by party leaders before the Commission at recent hearings on amendments to our public financing regulations dramatically described the minimal grass roots involvement by parties during the 1976 Presidential campaigns. FEC Hearings on Proposed Rulemaking 120-147, Testimony of Chairman, California Republican State Central Committee, and 1976 Counsel to the Republican National Committee, 34-72 (June 20, 1978). The general reasons offered for this low amount of activity was the perception that any political activity on the part of local party groups might either trigger Federal reporting responsibilities or inadvertently and unknowingly place other committees in violation of the contribution limits. This Advisory Opinion should substantially remove this unreasonable chilling effect on party activity. See also Report of a Conference on Campaign Finance Based on the Experience of the 1976 Presidential Campaigns, Kennedy School of Government, Harvard University (October 1977) ("The net impact of the law was to reduce participation, particularly at the local level." at 67).

auxiliary party unit must immediately forward all contributions, made for purposes of influencing Federal elections, to the State Committee which, in turn, reports each contribution as though it were received directly from the original contributor. See the Commission's response to Advisory Opinion Request 1976-15, copy enclosed.

4. You have asked whether Commission regulations at 11 CFR 110.7, explaining the methods by which party committees may spend against the limits of 2 U.S.C. 441a(d), mean that each party committee at the county level as well as the auxiliary bodies have separate 441a(d) limits. This question is answered in the negative. The relationships between the county committees, the auxiliary bodies and the State Committee are not determinative with regard to party expenditures since by operation of law 441a(d) gives only one spending limit to the entire State party organization: State, county, district, city, auxiliary, or other party political committee.

5. You further ask about the reporting requirements under 110.7(c)(1) and (2) of the regulations. The regulations at 11 CFR 110.7(c) set out alternative methods for administration of the single State party spending limit specified in 441a(d). The alternative in 110.7(c)(2) permits the State committee to delegate to the subordinate party committee responsibility for complying with the State party limits in 441a(d) after an allocation statement has been agreed to and filed with the Commission. However, under 110.7(c)(2)(iii), each subordinate party committee, which is not registered and reporting as a "political committee" under the Act but makes "expenditures" in excess of $100 in a calendar year, is required to file a registration statement and periodically report its receipts and expenditures as though it were a "political committee." The term "expenditure" in this context means expenditures made under 441a(d) for the purpose of influencing the election of any person to Federal office.

Under the alternative in 110.7(c)(1), consolidated reports of 441a(d) expenditures filed by the State Committee must disclose all such expenditures by any party committee within the State. The State Committee should use Schedule F for reporting 441a(d) expenditures by all party units -- State, county, district, city or other local level -- and by auxiliary party bodies.

6. You ask whether the special $1,000 coordinated spending limit for party committees, as prescribed in Commission regulations at 11 CFR 110.7(b)(5) and 146.1, is available to the county committees in the 1978 general election. This question is answered in the negative. The purpose of this regulation was to give party committees at the State, county and other local level a special spending right in connection with a general election held to elect the President and Vice President. Accordingly, 110.7(b)(5) would not be applicable in connection with the 1978 general election.[8]

7. You have asked whether brochures or flyers, prepared and distributed at the expense of the State party or county committees, would be within the slate card or sample ballot exception of the Act and Commission regulations if they include pictures of "county, legislative, statewide, Congressional, and Senatorial candidates, possibly containing biographical data on the candidates, party philosophy, and information on where to vote." You further ask if use of the

[8] The special $1,000 spending limit of the cited regulation was also based on 26 U.S.C. 9012(f) which clearly is relevant only in a Presidential general election.

brochure or flyer as a "direct mail piece" makes any difference and if further guidelines are available on slate cards.

As you recognize, the Act exempts from the definitions of "contribution" and "expenditure" any payments made by the State or local committee of a political party for costs it incurs to prepare, display, mail or otherwise distribute, a printed slate card, sample ballot or "other printed listing" which includes at least three candidates for any public office who are to be elected in the relevant State. However, the exemptions are not available if the candidate listings are displayed on public media -- broadcast stations, newspapers, magazines, and similar types of general public political advertising, such as billboards, posters, and signs. 2 U.S.C. 431(e)(5)(E) and 431(f)(4)(G); also see Commission regulations at 11 CFR 100.4(b)(7) and 100.7(b)(11).

The Commission has previously concluded that the so-called "slate card" exemption permits State and local party committees to finance any "other printed listing" which is limited to information identifying the candidates by name, the office or position currently held by the candidate, the elective office being sought, party affiliation, and voting information such as time and place of election and instructions on the method for voting a straight party ticket. The slate card exemption is not intended as a device for party committees to circumvent the reporting provisions and the limitations on contributions and expenditures by undertaking extensive campaigning on behalf of the candidates.[9] Rather, the purpose of this exemption is to allow State and local parties "to educate the general public as to the identity of the candidates of the party."[10] Pictorial identification of the candidates is a permissible means of identifying them under the slate card exemption. Including biographical information, other than that specifically mentioned above, would not be permissible under the stated exemption; nor would material on the candidates' positions on the issues or statements of "party philosophy."

A printed listing which otherwise qualifies (as discussed above) under the sample ballot exemption may be distributed as a "direct mail piece," since for purposes of that exemption, direct mailing is not enumerated as a similar type of "general public political advertising." Compare 2 U.S.C. 441d.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)
Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures

[9] See statement of Congressman Frenzel, 120 Cong. Record, H10334 (daily ed. October 10, 1974).
[10] H. Conf. Rept. 1438, 93d Congress, 2d Sess., p. 65 (1974).