2 SEP 1976

Re: AOR 1976-15

Ross E. Davis, State Chairman
Republican State Central Committee
595 Industry Drive
Tukwila, Washington 98188

Dear Mr. Davis:

This letter is in further response to your request of April 7, 1976 concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), to the organizational structure and operations of the Republican State Central Committee of Washington.

We regret the delay in answering your inquiry, but, subsequent to the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1 (1976), the Commission was required to suspend the issuance of advisory opinions until after May 21, the date of its reconstitution. Moreover, 2 U.S.C. §437f, as amended by the Federal Election Campaign Act Amendments of 1976, now requires the Commission to formulate its rules of general applicability by proposing formal regulations, rather than by the advisory opinion process. The proposed regulations were submitted to the Congress on August 3, 1976.

You state that Congressional District Clubs were formed in each congressional district for the purpose of raising funds for Republican Congressional candidates; the Clubs forward the funds raised to the Washington State Republican Federal Campaign Committee (WSRFCC) which files reports and will control expenditures after the primary. You ask several questions with respect to this procedure: (1) whether the operations of the WSRFCC comply with the requirements of the Act, (2) whether the Congressional District Clubs would have separate contribution and expenditure limitations, and (3) whether the Clubs would have separate reporting requirements.

Section 102.6 of the Commission's proposed regulations permits State party committees and subordinate State committees which intend to support Federal candidates to establish a separate Federal campaign committee with a segregated Federal account. Alternatively, such committees may establish a single committee (with a single account) which makes contributions to both Federal and non-Federal candidates, whose contributors would be subject to the Act's contribution limitations and prohibitions. See §102.6(b), copy enclosed, for permissible contributions to these committees. There are no contribution limitations on the transfer of funds "between and among political committees which are . . . State, district or local committees . . . of the same political party." 2 U.S.C. §441a(a)(4). Thus the Clubs could make unlimited transfers to the WSRFCC.

With respect to the question of what contribution limitations would apply to the Clubs, §441a(a) of Title 2, United States Code contains various limitations on contributions from persons and multi-candidate political committees to Federal candidates and political committees. For purposes of these contribution limits §110.3(b)(b)(2) of the proposed regulations provides that the Clubs and the WSRFCC are presumed to be a single committee. Your letter seems to assume that the Clubs would be considered with the WSRFCC since it indicates that the Clubs will forward their funds to the WSRFCC. However, the above presumption will 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
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> (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.

Each Club which satisfies the stated criteria for avoiding application of the presumption would be entitled to its own contribution limits. A Club not satisfying the criteria would, under 2 U.S.C. §441a(a)(5), be considered one with WSRFCC.[1] All contributions of both entities to Federal candidates and political committees would be aggregated and considered as made by a single committee for purposes of the limits in 2 U.S.C. §441a(a)(1) and (2).[2]

In addition to providing for contributions to Federal candidates the Act, 2 U.S.C. §441a(d), expressly allows a State committee of a political party, "including any subordinate committee of a State committee," to make <u>expenditures</u> in connection with the general election campaign of a candidate for the House of Representatives which do not in the aggregate exceed $10,000. The relationship between the Club and WSRFCC for purposes of contribution limits is not determinative with regard to party expenditures since by operation of law §441a(d) gives only one <u>spending</u> limit to the entire State party structure: State, county, district, city, or other subdivision of a State. Any desired allocation of this amount between the State committee and subordinate committees including the Clubs is possible, so long as the total expenditure limit is not exceeded. Section 110.7(c) of the Commission's proposed regulations sets out alternative methods available to the State committee for the administering of this spending limitation.[3]

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[1] "[A]ll contributions made by political committees established or financed or maintained or controlled by any . . . other person . . . shall be considered to have been made by a single political committee;" "person" is defined in §431(h) to include committees, associations, and organizations.

[2] The Commission notes that 2 U.S.C. §431 contains several exemptions from the definition of "contribution" and "expenditure." Some of these exemptions only go to limitations, others are exemptions from reporting and limitations.

In addition to the party spending allowed under 2 U.S.C. §441a(d) the Commission has recognized that party committees at the State, county, city, or congressional district level may wish to undertake spending that furthers the election of that party's candidates for President and Vice President as well as other party nominees. Such spending not in excess of $1,000 per committee is permitted under §110.7(b)(5) of the proposed regulations and does not count against the limits of 2 U.S.C. §441a(d). Enclosed for your information is a copy of the Commission's response to a recent inquiry concerning the application of §110.7(b)(5).

Your final question is whether, under the facts outlined in your letter, the Clubs would be required to file reports with the Federal Election Commission. Any political committee which anticipates receiving contributions or making expenditures in an aggregate amount exceeding $1,000 in a calendar year is required to file with the Commission a statement of organization under 2 U.S.C. §433 and periodic reports of receipts and expenditures under 2 U.S.C. §434.[4] "Political committee" is defined in 2 U.S.C. §431(d) as "any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000." If the Clubs were not merely collection agents for the WSRFCC, but instead either retained contributions over $1,000 for their own purposes, or expended over $1,000 themselves in connection with any Federal candidate's election, they would be "political committees" under §431(d) and would therefore be required to file their own reports. If, on the other hand, the Clubs turn over to the WSRFCC in a timely fashion all proceeds they receive as a result of their solicitations on behalf of congressional candidates, and are in essence mere receiving agents for the flow of contributions from the congressional districts to the WSRFCC, they would not be required to file separate reports. They must, however, under 2 U.S.C. §432(b) keep a record of any contribution in excess of $50 including the amount, identification of the contributor and the date received. The Clubs must turn over this information to the treasurer of the WSRFCC no later than 5 days after receipt of the contribution, and the WSRFCC would include this information in its next required report to the Commission.

This response relates to your opinion request but may be regarded as informational only and not as an advisory opinion since it is based in part on proposed regulations of the Commission which must be submitted to Congress. The proposed regulations may be prescribed in final form by the Commission only if not disapproved either by the House or the Senate within thirty legislative days from the date received by them. 2 U.S.C. §438(c). As mentioned previously, the Commission submitted proposed regulations to the Congress on August 3, 1976. It is the Commission's view that no enforcement or compliance action should be initiated in this matter if the actions of the political committees conform to the conclusions and views stated in this letter.

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[3] If a Club wishes to avoid becoming a separate "political committee," however, any expenditures by it should not exceed $1,000 in a calendar year. See discussion below.

[4] If a Club supports only candidates for the House of Representatives the required statement and reports would be filed with the Clerk of the House as custodian for the Commission. 2 U.S.C. §438(d), see §105.4 of the proposed regulations (copy enclosed).

Sincerely yours,

(signed)
Vernon W. Thomson
Chairman for the
Federal Election Commission

Enclosures