FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 19, 1978

AO 1978-50

Morley A. Winograd
Chairperson
Michigan Democratic Party
Hart-Kennedy House
606 Townsend
Lansing, Michigan 48933

Dear Mr. Winograd:

This responds to your letter of July 13, 1978, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") to a proposed get-out-the-vote campaign of the Michigan Democratic Party to increase support for the Democratic Gubernatorial nominee of the party.

Your letter explains that in connection with the 1978 general election the Michigan Democratic Party:

> "intends to conduct an extensive educational and motivational campaign designed to increase support for our Democratic Gubernatorial nominee and turn-out those voters who are supporting that candidate. This campaign will involve telephone calls, mailings, literature distributions and personal visits by campaign workers to persons who are likely to be supporting the Democratic Gubernatorial nominee."

You further explain that the Party's project will "not involve contacting or communicating with voters based upon their support for any of the Democratic nominees for Federal office." However, the 1978 general election in Michigan will include one seat in the United States Senate and 19 Congressional offices. Your letter also states that party expenditures on behalf of candidates for Federal office and contributions received for Federal campaign purposes will be reported by the Party's Federal campaign committee-- Democratic Campaign Committee (Michigan). These expenditures, you say, "will not be related to our voter contact or voter turnout program which will be restricted solely to the Democratic Gubernatorial campaign."

You pose three questions for which you request an opinion:

(1) Are expenditures of the Michigan Democratic Party for the purpose of identifying and motivating supporters of the Party's Gubernatorial nominee covered by the Act?

(2) If these expenditures are subject to the Act, may the Party continue to maintain two separate accounts for the purpose of reporting contributions and expenditures of the Party under both Federal and State law? If this is permissible, how may it be accomplished?

(3) If some portion or all of the described expenditures are subject to the Act, on what basis, if any, should they be allocated to the Party's special expenditure limits on behalf of Senatorial and Congressional candidates under 2 U.S.C. 441a(d)(3)?

In response to your first question, the Commission concludes that expenditures of the Party for the purpose of identifying and motivating persons to support the Party's Gubernatorial nominee are, in part, for the additional purpose of influencing the election of persons to Federal office. In Advisory Opinion 1978-10, the Commission recently held that a political party's voter registration and get-out-the-vote activity in a Federal election year, even though not expressly on behalf of candidates for Federal office, was nevertheless for the purpose of influencing the persons contacted to vote for all candidates of the political party. The Commission therefore required that party expenditures for its get-out-the-vote campaign be allocated on a reasonable basis between the two classes of candidates who would appear on the same election ballot - those seeking Federal office and those seeking other elective public offices. The expenditures for get-out-the-vote drives would not, however, need to be allocated as expenditures on behalf of specific candidates for Federal office if the drive is not conducted on behalf of clearly identified candidates for Federal office to whom the expenditure can be directly attributed. See Commission regulations at 11 CFR 106.1(c)(2) For example, if the purpose of the drive is to advocate the election of one or more clearly identified candidates for Federal office, then the cost must be attributed to that candidate or candidates, for limitation and reporting purposes, as either a contribution or an expenditure. 2 U.S.C. 441a(a) and 441a(d)(3). However, the Party may use printed materials in its get-out-the-vote drive which identify candidates for Federal office without allocating any cost to particular Federal candidates, if those materials are within the slate card or sample ballot exemption. 2 U.S.C. 431(e)(5)(E) and 431(f)(4)(G).* See Advisory Opinion 1978-9 (question 7).

In response to question (2), the Democratic Party of Michigan may continue to maintain its registered Federal campaign committee -- Democratic Campaign Committee (Michigan) -- for purposes of reporting contributions and expenditures coming within the purview of the Act and Commission regulations. See 11 CFR 102.6. The reporting political committee of the Party is required to defray the allocable Federal election portion of the expenses incurred by the Party for

* Expenses incurred under the cited sample ballot exemption are neither contributions nor expenditures for purposes of the Act. They are not subject to any monetary limit and may be funded by either a reporting political committee or nonreporting entity. If financed by a reporting political committee, the amounts spent for sample ballot materials need to be reported as a "Disbursement for exempt sample ballot expenses" in order to account for all cash outlays of the reporting political committee. See Commission regulations at 104.2(b).

the described get-out-the-vote campaign. These expenditures are considered administrative expenses of the Party and may be allocated under the formula described in Commission regulation 106.1(e). Other allocation formulas have been approved by the Commission as reasonable and may be used to determine the amount of get-out-the-vote expenditures which must be paid by the Democratic Campaign Committee of Michigan. See the Commission's response to Advisory Opinion Request 1976-72 and a Commission guideline issued in December 1977, copies enclosed.

Your letter suggests that for the Commission to require that some portion of the Party's get-out-the-vote expenses be financed and reported by its registered Federal political committee would put the Party in violation of Michigan law. You state that Michigan law requires that all Party expenditures be made from one account. To the extent that Michigan law requires the Party to make or report expenditures differently than required by this opinion (which concludes that some portion of the described Party expenses come under the Act and must be financed by a reporting political committee) the Michigan law is superceded and preempted by virtue of 2 U.S.C. 453. That section provides that the Act, and regulations prescribed under the Act, "supercede and preempt any provision of State law with respect to election to Federal office." In addition, Commission regulations at 11 CFR 108.7(b)(1) and (b)(2) provide that the Act and Commission regulations supercede State law concerning the organization and registration of political committees supporting Federal candidates and the disclosure of receipts and expenditures by political committees. However, copies of reports filed under the Act with the Commission must also be filed with the Secretary of State "of the appropriate State." 2 U.S.C. 439(a) and 11 CFR 108.3. Accordingly, the Democratic Campaign Committee (Michigan) is required to file copies of its reports submitted under the Act with the Michigan Secretary of State.

In response to question (3) the expenditures of the drive allocable to Federal election purposes do not have to be further allocated to specific candidates for Federal office, and therefore charged against the party's limits in 2 U.S.C. 441a(d)(3), unless those expenditures are made on behalf of clearly identified candidates to whom the expenditures can be directly attributed. As discussed above, candidates for Federal office may be identified in conjunction with the drive without any charge to 441a limits, if the identification is made on materials coming within the sample ballot or slate card exemption. See the discussion in response to question (1).

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