



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

July 19, 1979

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-34

Mr. Barry E. Billington  
Rich, Bass, Kidd, Witcher & Billington  
470 First National Bank Building  
315 W. Ponce de Leon Avenue  
Decatur, Georgia 30030

Dear Mr. Billington:

This responds to your letter of June 15, 1979, requesting an advisory opinion on behalf of Mr. Morris Woods, a candidate for President of the United States, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to Mr. Woods' receipt of public financing payments. Specifically, you request an advisory opinion as to whether 142.2(a) and 142.2(b) of the Commission's regulations preclude pre-election public financing payments for candidates of new parties.

26 U.S.C. 9004 sets forth the entitlement of eligible candidates to payments from the Presidential Election Campaign Fund. Under that section, and Part 142 of the Commission's regulations, an eligible candidate - other than a major party candidate- is entitled to pre-election public funding only if such candidate (i) is the candidate of a minor party<sup>1</sup> or (ii) was a candidate of at least one minor or new party in the previous Presidential election and received 5% or more, but less than 25%, of the total number of popular votes received by all candidates for such office. 11 CFR 142.2(a) and (b). In either circumstance, the candidate is entitled to pre-election payments of a proportionate amount of the total grant available to major party candidates. A new party<sup>2</sup> candidate, on the other hand, is entitled only to "retroactive", i.e. post-election, public funding and, then, only if such candidate receives 5% or more of the total number of popular votes cast for the office of President in such election. 11 CFR 142.3(a).

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<sup>1</sup> 2 U.S.C. 9002(7) and 11 CFR 140.7 define "minor party" as a political party whose candidate for the office of President in the preceding Presidential election received as the candidate for such party, 5% or more, but less than 25%, of the total number of popular votes received by all candidates for such office.

<sup>2</sup> A "new party" is defined as a political party which is neither a major nor a minor party. 26 U.S.C. 9002(8); 11 CFR 140.8.

Reports on file with the Commission indicate that Mr. Woods registered as a candidate for President on May 5, 1979, and listed his party affiliation as the "Freedom Party". The "Freedom Party National Committee" filed a Statement of Organization on the same date.<sup>3</sup> Accordingly, the Commission concludes that Mr. Woods, as the candidate of a new party, would not be entitled to pre-election campaign fund payments.

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)

Robert O. Tiernan  
Chairman for the  
Federal Election Commission

Enclosure

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<sup>3</sup> The Commission expresses no opinion as to the status of the "Freedom Party National Committee" as the national committee of a political party within the meaning of 2 U.S.C. 431(k) and (m). (See also, Advisory Opinion 1978-58, copy enclosed)