



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 17, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-56

Mr. Bert DeLeeuw
The Citizens' Party
525 13th Street, N.W.
Washington, D.C. 20004

Dear Mr. DeLeeuw:

This responds to your letter dated May 6, 1980, requesting an advisory opinion on behalf of the Citizens' Party with regard to application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to post-election Federal financing for minor and new party presidential candidates.

You state that the purpose of your letter is to "request an advisory opinion... relating to the manner in which our [Citizens' Party] vote total in the November election will be counted for purposes of attaining the 5% level necessary for retroactive federal financing." You ask specifically, for purposes of counting vote totals under 26 U.S.C. 9004, whether votes cast for a party's presidential candidate whose name appears on one or more state ballots as an independent candidate, rather than as the candidate of such political party, count toward the requisite 5% of the popular vote cast in the presidential election for that candidate?

The Commission concludes that under 26 U.S.C. 9004(a)(3), a new party candidate running for the Office of President in the 1980 election who receives 5% or more of the total number of popular votes cast for the Office of President may be entitled to payment under 26 U.S.C. 9006 if otherwise eligible pursuant to Chapter 95 of Title 26. The appropriate payment under 9006 is computed by totalling all of the popular votes received by the minor or new party candidate in the 1980 presidential election which would include those votes cast for a candidate whose name appears on a state ballot as an independent candidate, rather than as the candidate of a political party.

The Commission notes that the Supreme Court in Buckley v. Valeo, 424 U.S. 1 (1976), sustained the 5% eligibility threshold of 9004(a)(3) against the constitutional challenge that the threshold discriminates against minor and new parties. In doing so the Court paraphrased the statute as meaning that a party's presidential candidate needed only 5% or more of the actual vote to qualify. Buckley v. Valeo, 424 U.S. 1, 103 (1976).

According to records on file with the Commission, Mr. Barry Commoner has registered as the presidential candidate of the Citizens' Party. Thus, with respect to the factual situation you present, all popular votes cast for Mr. Commoner as a candidate for the office of President, whether or not his name appears on a state ballot as the candidate of the Citizens' Party, will be counted to compute the appropriate post-election financing payment to which Mr. Commoner may be entitled under 26 U.S.C. 9006.

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 yours,

(signed)

Max L. Friedersdorf
Federal Election Commission