



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 20, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-30

Frank W. Shelton, Jr.
Freedom Sentry Ranch
Cherryvale, Kansas 67335

Dear Mr. Shelton:

This responds to your letter of July 1, 1981, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended (the "Act"), to the selection of an organization's name, the transfer of liability, and the determination of an organization's status.

According to the facts related in your request, you are listed as the Chairman of the Constitution Party which was conceived in 1979 as a vehicle for Governor (N.H.) Meldrim Thomson's presidential candidacy. You relate that "the Constitution Party was never formally organized nor was a constitution and/or by-laws, or other party document, ever adopted." You state that both the Thomson for President campaign committee and the Constitution Party were controlled by Thomson and his personally selected assistants. You add that you served on an Advisory Committee which met twice during the campaign. Thomson abandoned his candidacy in April 1980 and Constitution Party activity ceased except for attempts to raise contributions to pay off the campaign debts. Your letter goes on to state that in December 1980 an organizing meeting was held in Kansas City, Missouri, which was attended by a few persons formerly active in Thomson's campaign and by other "interested conservatives" to explore possibilities for "future political activity." Only a "very few" attendees were from the Advisory Committee to the Thomson campaign. This meeting and another in June 1981 in St. Louis, Missouri, resulted in plans to "explore the support for, and prepare plans for, a national convention of conservatives to formally organize a national political party." The name favored for this possible political party is "The Constitution Party of the United States."

In your advisory opinion request you ask (1) whether adoption of the preferred name would make the new political organization liable for any excessive contributions received by the 1979 Constitution Party. You also ask: (2) whether the 1979 political committee registered as the

Constitution Party, which is neither currently active nor has been active for over a year, continues to be recognized by the Commission as a political committee; (3) whether the organization's failure to "formally organize" affects such recognition as a political committee; and (4) whether the absence of organizing documents (i.e., a constitution and by-laws) for the 1979 committee affects Commission recognition of that organization as a political committee.

The Act and its implementing regulations do not address the name that may be selected by a political committee of a political party organization. Requirements as to name selection do exist for political committees which are separate segregated funds, and for principal or other candidate-authorized campaign committees. Also, a political committee that is not authorized by a candidate may not use the name of any candidate in its name unless it is a delegate committee or a draft committee. See 11 CFR 102.14. Since the proposed Constitution Party of the United States does not appear to be a political committee within the categories of those required by the Act or Commission regulations to include certain information in its name, the Act would not prohibit its use of the same name as that of the 1979 committee. 2 U.S.C. 432(e)(4) and (5). See Advisory Opinion 1977-52, copy enclosed.

In your situation you want to use "Constitution Party" in the new organization's title, but in doing so you don't want the new committee to take on any liability for possibly excessive contributions received by the 1979 committee. The Commission concludes that the mere fact of name similarity would not by itself, without more, subject the new organization to any liability for possible violations of the Act by the 1979 committee. A determination of liability for violations of the Act is based on the totality of the surrounding facts and circumstances. Such a determination may take into account, among other factors, the similarity of the organizations' names.

Turning to your other questions, once an organization becomes a political committee under 2 U.S.C. 431(4) and 11 CFR 100.5, the committee has a continuing existence until terminated. Termination can occur when the political committee files an acceptable termination report, or when the Commission by administrative decision considers the committee to be terminated. 2 U.S.C. 433(d)(1) and (2), 11 CFR 102.3 and 102.4. The fact that a political committee is no longer active in receiving or disbursing funds is relevant to a decision by the Commission to administratively terminate the Political committee. But that fact alone is not controlling. See 11 CFR 102.4. The 1979 Constitution Party is recognized by the Commission as a political committee even though it may never have been "formally organized" and may never have adopted a constitution and by-laws. That the Constitution Party was never "formally organized" does not affect Commission recognition as a political committee since the only organizational requirements for political committees are those set forth in 2 U.S.C. 432(a), (h), and 433. Also see 11 CFR 102.1 et seq. By contrast, recognition of national committees of political parties is dependent, in part, upon the existence of by-laws. 2 U.S.C. 431(14), 11 CFR 100.13; also see Advisory Opinions 1980-121 and 1980-3. Recognition of political committees is not dependent upon such a requirement.

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)

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosures (Advisory Opinions 1980-121, 1980-3, 1977-52)