



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 8, 1983

ADVISORY OPINION
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-62

Thomas S. Johnson
Williams & McCarthy
400 Talcott Building
P.O. Box 219
Rockford, Illinois 61105

Dear Mr. Johnson:

This refers to your letter of December 13, 1982, requesting an advisory opinion with respect to application of the Presidential Election Campaign Fund Act ("the Fund Act") to John B. Anderson in the event he becomes a presidential candidate for 1984.

Your request recalls the fact that as a presidential candidate in the 1980 general election Mr. Anderson received more than 5% but less than 25% of the total number of popular votes received by all candidates for President in that election. Commission records indicate that Mr. Anderson received 5,719,437 popular votes and that such vote total was 6.61% of the total popular vote for President. Agenda Document #81-2-B for the Agenda of January 8, 1981. The Commission issued certifications of entitlement under the Fund Act with respect to Mr. Anderson in November 1980 and January 1981. Those certifications were based upon all the popular votes he received in the 1980 general election. See Agenda Documents #80-373 for the Agenda of November 10, 1980, and #81-2-B; also see Advisory Opinion 1980-96.

Your request further states that Mr. Anderson is currently considering whether he will become a presidential candidate for 1984 "on behalf of a political organization similar to that of his 1980 campaign." At this time, you explain, Mr. Anderson has neither formally organized a political party to support his possible candidacy, nor has he taken action under state laws to qualify for the 1984 general election ballot.

With this limited factual background, your request presents the question:

When will John B. Anderson, who as a new party Presidential candidate in the 1980 general election received more than 5%, but less than 25% of the total

number of the popular votes, be eligible for pre-election funding in the next Presidential general election under the provisions of 26 U.S.C. 9004(a)(2)(B) as a Presidential candidate, assuming he would satisfy all of the conditions for eligibility under 26 U.S.C. 9003?

This question, as you have framed it, presumes that Mr. Anderson will have a pre-general election entitlement in the 1984 presidential general election under 26 U.S.C. 9004(a)(2)(B) if he satisfies all conditions of eligibility under 26 U.S.C. 9003. Accordingly, you ask: when will Mr. Anderson become "eligible for pre-election funding..."?

As you realize, the amount of pre-general election funding under the Fund Act for an eligible candidate, who is not a major party candidate, is determined pursuant to 26 U.S.C. 9004(a)(2).¹ You have posed the question of Mr. Anderson's pre-general election entitlement for 1984 only with respect to 9004(a)(2)(B). That provision states:

(B) If the candidate of one or more political parties (not including a major party) for the office of President was a candidate for such office in the preceding presidential election and received 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office, such candidate and his running mate for the office of Vice President, upon compliance with the provisions of section 9003(a) and (c), shall be treated as eligible candidates entitled to payments under section 9006 in an amount computed as provided in subparagraph (A) by taking into account all the popular votes received by such candidate for the office of President in the preceding presidential election. If eligible candidates of a minor party² are entitled to payments under this subparagraph, such entitlement shall be reduced by the amount of the entitlement allowed under subparagraph (A).

The quoted provision requires the presidential candidate of one or more political parties (other than a major party), who claims funds thereunder, to have received in the next preceding presidential election at least 5% (but less than 25%) of the total number of popular votes received by all presidential candidates in that election. As noted above, the Commission determined in 1980 and 1981 that Mr. Anderson received sufficient popular votes in the 1980 presidential general election, and otherwise satisfied the requirements of the Fund Act, to qualify for post general election funding. Advisory Opinion 1980-96. By virtue of that 1980 record, including the Commission's certifications with respect to Mr. Anderson's entitlement under 26 U.S.C. 9001(a)(3), Mr. Anderson satisfies two of the mandatory requirements of entitlement under 26 U.S.C. 9004(a) (2) (B): he was an eligible presidential candidate in 1980 who received 6.61% of the popular votes received by all 1980 presidential candidates. With regard to another requirement of 9004(a)(2)(B) -- status as the 1984 presidential candidate of one or more political parties (not including a major party)-- the Commission does not presently have before it

¹ Sections 9004(b) and 9004(c) also impose limitations and restrictions on the entitlements of eligible candidates. Although applicable, these provisions are not at issue in this opinion.

² The term "minor party" is defined in 26 U.S.C. 9002(7). See also Commission regulations at 11 CFR 9002.7 and 9002.15.

sufficient facts on which to judge whether Mr. Anderson would qualify under this section. Neither does the Commission presently have before it the question of whether or not an independent candidate may qualify for public funding under Chapter 95.

In response to your question of when Mr. Anderson may be entitled to pre-general election funding for 1984, any future certification by the Commission of his entitlement would be dependent on his compliance with all conditions for eligibility as set forth in the Fund Act and Commission regulations. One of these conditions is that Mr. Anderson be qualified to have his name on the 1984 election ballot as the presidential candidate of a political party in 10 or more states. 26 U.S.C. 9002(2)(B). See generally 26 U.S.C. 9002, 9003, 9005 and Commission regulations at 11 CFR Parts 9002, 9003, 9004, and 9005. Once the Commission determines that Mr. Anderson has satisfied all applicable conditions of eligibility, it is required to make an initial certification of the amount of his entitlement to the Secretary of the Treasury. This certification is required to be made no later than 10 days after the date the Commission determines that the conditions of eligibility have been met. 26 U.S.C. 9005, 11 CFR 9005.1.

This response constitutes an advisory opinion concerning application of the Fund 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)

Danny L. McDonald
Chairman for the Federal Election Commission