



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 1, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1983-15

J. Curtis Herge, Esq.
Sedam and Herge
8300 Greensboro Drive
McLean, Virginia 22102

Dear Mr. Herge:

This responds to your letter of May 3, 1983, requesting an advisory opinion on behalf of your client, the Republican Party of Virginia, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the distribution of State tax monies collected by means of a voluntary checkoff system.

Specifically, you ask whether the Republican Party of Virginia ("the party") may deposit in its Federal election account amounts paid to it by the State Treasurer pursuant to the provisions of Section 58-151.072:2 of the Code of Virginia, and if so, how such a transaction should be reported.

As you note in your request, Section 58-151.072:2 of the Code of Virginia states the following:

Voluntary contribution to political party. - A. Any individual eligible to receive a tax refund pursuant to § 58-151.072 may designate at the time of filing his return that two dollars of such refund be paid to the State Central Committee of any party which meets the definition of a political party under § 24.1-1 of the Code of Virginia as of July 1 of the previous taxable year. In the case of a joint return of husband and wife, each spouse may designate that two dollars be paid.

B. The State Tax Commissioner shall revise the state income tax return form as necessary to permit a voluntary check-off refund designation as outlined in subsection A. All money collected pursuant to this section shall be deposited into the state treasury.

C. The State Tax Commissioner shall determine by June 30 of each year the total amount designated for each party during that year. The direct costs of administration shall be deducted in equal amounts from each party's share. The Commissioner shall report the same to the State Treasurer, who shall pay that amount to the appropriate party. (1982, c. 351.)

This provision became effective for the taxable year beginning January 1, 1982. Under Section 24.1-1 of the Code of Virginia, the terms "party" and "political party" are defined as follows:

(7) "Party" or "political party" shall mean an organization or affiliation of citizens of the Commonwealth which, at the last preceding statewide general election, polled at least ten percent of the total vote cast for the office filled in that election by the voters of the Commonwealth at large. Such organization or affiliation of citizens shall also have a state central committee and a duly elected chairman which have continually been in existence and holding office for the six months preceding the filing of a nominee[.]

For 1982, the only qualifying parties were the Democratic and Republican Parties of Virginia. See 1982 Virginia Individual Income Tax Return, Forms 760 and 760S. The Virginia Code neither restricts nor prescribes the purposes for which the recipient party committees may use the funds they receive under the tax checkoff plan.

The Commission notes initially that amounts "checked off" pursuant to this checkoff system would constitute contributions by individual taxpayers to the party for purposes of the Act only to the extent the party decides to deposit those funds in its Federal account. 2 U.S.C. 431(8)(A) and 11 CFR 100.7(a). The only persons eligible to participate in this system are individual taxpayers who are owed a refund. By electing to donate funds via this mechanism to one of the two parties, these taxpayers are assigning two dollars that would otherwise be refunded to them and are thereby making a contribution.*

Under the Act and Commission regulations, the treasurer of a political committee must keep an account of all contributions received by the committee. For any contribution over \$50 the account must include the date and amount of the contribution as well as the name and address of the person who made the contribution. 2 U.S.C. 432(c)(2). In addition, the treasurer must keep records identifying each contribution aggregating more than \$200 during a calendar year from the same person, and must include the full name and mailing address of the person, occupation and employer's name, the date of receipt, and the amount of the contribution. 2 U.S.C. 432(c)(3) and 11 CFR 102.9(a)(2). Similarly, all contributions by a person in excess of the \$200 aggregate amount must be itemized on reports filed by the recipient committee. 2 U.S.C. 434(b)(3)(A) and 11 CFR 104.3(a)(4).

In the particular situation presented here, however, the Commission concludes that, although the amounts checked off by the individual taxpayers are contributions, such recordkeeping and itemized reporting of contributors would not be required under the Act. The amount of each contribution is \$2, substantially less than both the \$50 threshold for recording the name of the contributor and the \$200 aggregation threshold. See discussion above. Furthermore, in these

circumstances the Commission views the resulting contribution as similar to an anonymous cash (currency) contribution, which the donee is permitted to accept in amounts up to \$50 even though, by virtue of other recorded contributions, the donor may have exceeded the \$200 disclosure threshold or the applicable contribution limit, or both. See 11 CFR 110.4(c)(3).

With respect to the specific question raised by your request, the Commission concludes that the party may deposit funds received from the State Treasurer pursuant to this mechanism in its Federal account. The Commission also concludes that the funds received by the party, (for its Federal account) pursuant to this system should be reported as unitemized contributions. Although not required by the Act or regulations, it would be helpful if the party noted that the funds are derived from the Virginia individual income tax checkoff plan for political parties. This reporting method would permit disclosure of the significant role played by the State both in the making of the contributions and in their ultimate transfer to the party.

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)

Danny L. McDonald
Chairman for the Federal Election Commission

Enclosures (AOs 1982-17, 1980-103, and 1978-9)

*/ The Virginia checkoff system is distinguishable from other mechanisms for funding state parties previously considered by the Commission. In both Advisory Opinion 1978-9 and Advisory Opinion 1980-103, the Commission considered checkoff systems under which a taxpayer did not increase his or her tax liability (or reduce a refund) by designating money for a state party. Similarly in Advisory Opinion 1982-17, the Commission found that no contribution resulted from a fee-for-service arrangement involving proceeds from sales of personalized license plates. Copies of these opinions are enclosed.