



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 3, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-11

Harry Kresky, Esq.
Kresky, Sinawski & Hollenberg
19 W. 44th Street
Suite 1000
New York, New York 10036

Dear Mr. Kresky:

This responds to your letter of February 29, 1984, requesting an advisory opinion on behalf of Dennis Serrette, a 1984 presidential candidate, and Independents for Dennis Serrette, his principal campaign committee, with respect to his eligibility for matching funds under the Presidential Primary Matching Payment Account Act ("Matching Payment Act"), 26 U.S.C. 9031-9042.

You state that Mr. Serrette is seeking the nomination of various independent political parties in an attempt to place his name on the ballot for the Office of President of the United States in the 1984 general election in as many states as possible. You add that Mr. Serrette has made plans to: enter the presidential primary and take other steps necessary to obtain the nomination of the Peace and Freedom Party in California; enter the preferential primary and take other steps necessary to seek the nomination of the Liberty Union Party in Vermont; seek the nomination of the Consumer Party in Pennsylvania; seek ballot position as the Presidential candidate of the New Alliance Party in New York; seek the nomination of the Labor Farm Party in Wisconsin; and obtain signatures on nominating petitions in approximately 29 other states to insure that his name appears on the ballot in the general election for the Office of President. You note that the requisite number of signatures have already been collected in Ohio, Mississippi, Alabama, Maryland and Iowa.

You have asked whether, by engaging in these activities, Mr. Serrette would be entitled to receive matching funds, assuming he meets all of the other eligibility requirements of 26 U.S.C. 9033 and Commission regulations at 11 CFR Part 9033. In addition, you ask whether Mr. Serrette's participation in these activities would enable him to certify that he is seeking nomination by a political party to the Office of President in more than one state. You also ask whether, if the answer to the above question is no, Mr. Serrette would qualify for matching funds if the various parties, individuals, and organizations supporting him held a national convention

for the purpose of nominating a candidate of a national political party to be formed at the convention. Finally, you have inquired as to what is the last day of the matching payment period pursuant to 11 CFR 9032.6, and what is the last date on which contributions that would qualify as matchable contributions can be received.

Under 26 U.S.C. 9032(2), the term "candidate" is defined as "an individual who seeks nomination for election to be President of the United States", and does not include "any individual who is not actively conducting campaigns in more than one State." With respect to a candidate's eligibility to receive payments, the Matching Payment Act requires that the candidate certify that he or she "is seeking nomination by a political party." 26 U.S.C. 9033(b)(2). The regulations implementing this provision state that the term "political party" means "an association, committee or organization which nominates an individual for election to the office of President." 11 CFR 9033.2(b)(1). The Commission concludes that, in light of these provisions, assuming Mr. Serrette meets all of the other eligibility requirements of 26 U.S.C. 9031 et seq., he would not be barred from receiving matching payments solely because he is seeking the nomination of different political parties in different states. By participating in various primary elections and nominating conventions and by actively conducting a campaign with respect to those events, Mr. Serrette would be able to certify that he is seeking nomination by a political party to the Office of President in more than one state.

Because the answers to the above questions are in the affirmative, the Commission does not reach the issue of whether Mr. Serrette would qualify for matching funds if the various parties, individuals, and organizations supporting him held a national convention for the purpose of nominating a candidate of a national political party to be formed at the convention. See Advisory Opinion 1983-47, copy enclosed.

With respect to your question regarding the matching payment period, the end of the matching payment period for Mr. Serrette would be the earlier of (1) the last date when Mr. Serrette is nominated by any political party on the state level, or (2) the last day of the last national convention held by a major political party in 1984.* See 26 U.S.C. 9032(6) and 11 CFR 9032.6. The date when the matching payment period may end appears to be of limited significance since the principal factor is the candidate's continuing eligibility for matching payments once threshold eligibility is established. 11 CFR 9033.5(c).

Although not specifically asked in your questions, the matching payment period has some relevance with respect to the types of expenses that would be viewed as qualified campaign expenses of Mr. Serrette's campaign, assuming he becomes eligible for matching payments. Your request indicates that Mr. Serrette's campaign expenses will, in part, include expenses to obtain signatures for nominating petitions in several states so that his name will appear on the general election ballot as a presidential candidate.

* The Commission notes that none of the political party organizations identified in your request have been recognized by the Commission as having established a national committee of a political party. 2 U.S.C. 431(14). Accordingly, the Commission assumes for purposes of this opinion that conventions of those organizations would not be national conventions.

The Matching Payment Act and Commission regulations require that matching payments, as well as all disbursements of an eligible candidate's campaign committee(s), be used only for qualified campaign expenses. 26 U.S.C. 9032(9), 9033, 9038, 9042; 11 CFR 9032.9, 9033.1, 9034.4. Qualified campaign expenses may only be incurred with respect to the period in which a candidate is eligible for matching payments. 11 CFR 9034.4. The date when the candidate becomes ineligible coincides with the last day of the matching payment period for that candidate. 11 CFR 9033.5(c). Accordingly, campaign expenditures made (or campaign obligations incurred) within the matching payment period would satisfy the timeliness requirement for a "qualified campaign expense." In addition, such expenses must also be made in connection with the candidate's campaign for nomination. 11 CFR 9032.9. In Mr. Serrette's situation, expenditures will apparently be made to collect petition signatures for the general election ballot. The Commission is of the opinion that these expenses, to the extent they are paid or incurred within what would be Mr. Serrette's matching payment period if he becomes eligible for matching funds, would be qualified campaign expenses for purposes of the Matching Payment Act.

The Commission bases this conclusion on analogous provisions (limited to independent or nonmajor party candidates) of its regulations defining primary election for contribution limit purposes. The regulations recognize that for nonmajor party candidates the requirements of State law governing qualification for a position on the general election ballot serve purposes similar to a primary election or other nominating process. See 11 CFR 100.2(c)(4). Moreover, in Advisory Opinion 1975-44 (copy enclosed) the Commission addressed contribution limit issues with regard to the presidential candidate of a nonmajor party and held that such a candidate could receive contributions with respect to a nomination/primary election until the date on which the last major party to do so nominates its presidential candidate. The Commission emphasizes that this opinion reaches the qualified campaign expense issue only with respect to the ballot petition expenses of the Serrette campaign; the Commission is not herein addressing any other expense category.

Finally, you have asked what is the last day on which funds can be collected by Mr. Serrette's campaign which would qualify as matchable contributions. This question is not posed in a specific factual context and is thus more in the nature of a general inquiry than a proper request for an advisory opinion. Accordingly, the Commission refers you to relevant provisions of its regulations. The regulations indicate that otherwise matchable contributions may be received by an eligible candidate as long as he or she remains eligible and has net outstanding campaign obligations; however, in no event could matchable contributions be received after December 31 of the Presidential election year. See generally Commission regulations at 11 CFR Parts 9033 and 9034; and, in particular, 11 CFR 9033.5 and 9034.5. Of course, to establish entitlement to matching payments at any time, a candidate must become eligible and must maintain eligibility. 11 CFR 9034.1. In addition, the public financing statutes and Commission regulations have separate definitions of qualified campaign expenses incurred to further a candidate's election and those incurred in connection with a campaign for nomination for election. See 26 U.S.C. 9002(11) and compare 26 U.S.C. 9032(9); also, see 26 U.S.C. 9012(c), 9042(b).

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)

Lee Ann Elliott
Chairman for the
Federal Election Commission

Enclosure (AO 1983-47 and 1975-44)