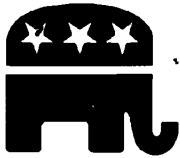


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The Republican Party of Kentucky

Capitol Avenue at Third Street ★ P.O. Box 1068 ★ Frankfort, Kentucky 40602
Phone (502) 875-5130 FAX (502) 223-5625

April 12, 1991

Chairman John McGarry
Federal Election Commission
999 E Street, NW
Washington, DC 20463

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AOR
1991-14

Dear Mr. Chairman:

This is a request for an advisory opinion, submitted pursuant to 11 CFR 112.1 by the undersigned, who is treasurer of the Republican Party of Kentucky ("RPK").

Background

Since January 1, 1983, a Kentucky taxpayer has been able to request that a portion of his or her Kentucky individual income tax be paid by the state to either the Republican or Democratic party (or such other party as meets the definition given later herein). The enabling legislation for this is as follows, as excerpted from the Kentucky Revised Statutes ("KRS"):

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OFFICE OF GENERAL COUNSEL
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141.071. Definition – Right to designate portion of tax to political party. –

(1) The term "political party" shall, for the purposes of this section and KRS 141.072 and 141.073, mean those parties who met the requirements of KRS 118.015 on January 1 of the taxable year.

(2) Every individual whose income tax liability for the taxable year is as great or greater than amounts permitted to be designated under this section, may designate that the tax paid or portion thereof be paid, as provided under this section and KRS 141.072, to a political party. Amounts of individual tax liability permitted to be so designated are as follows: for the 1982 taxable year, one dollar and fifty cents (\$1.50); for the 1983 taxable year, one dollar and seventy-five cents (\$1.75); and for the 1984 taxable year and for every year thereafter, two dollars (\$2.00). In the case of a joint return, each spouse shall, for the purposes of this section, be considered to have an equal tax liability and may each designate amounts as provided in this section, provided that the joint tax liability is at least as great as amounts jointly so designated. Such designation shall not increase or decrease the income tax liability of any taxpayer nor shall it reduce the overpayment of any taxpayer.

141.072. Designation of party -- Certification and remittance to state and county party organizations. -- The designation for a political party shall appear on the face of the individual income tax return. Fifty cents (\$.50) of any designation pursuant to KRS 141.071 shall be reserved for remittance to the appropriate official of the local governing authority of the designated political party within the taxpayer's resident county. The remainder of the designation shall be reserved for remittance to the appropriate official of the state governing authority of the designated political party. The secretary of revenue shall annually certify by December 1 all such designated amounts to be paid by the state treasurer, and the treasurer shall annually remit by the following January 1 such funds to the appropriate official of the state and local governing authorities of the designated political party.

141.073. Rules and regulations. -- The department of revenue shall promulgate such rules and regulations as may be necessary to effectively administer the provisions of KRS 141.071 and 141.072.

KRS 118.015 defines a "political party" as an organization representing a political party and having a constituted authority for its government and regulation, and which cast at least twenty percent of the total vote cast at the last preceding presidential election. Under these criteria, RPK qualifies as a "political party."

Related Kentucky laws on campaign finance regulation provide as follows:

121.230. Use of portion of income tax designated to political party -- Records and reports -- Audit. -- (1) No state or local governing authority of a political party to which funds are remitted under KRS 141.071 to 141.073 shall use such funds other than in support of the party's candidates in a general election and for the administrative costs of maintaining a political party headquarters.

(2) Each state or local governing authority of a political party to which funds are remitted under KRS 141.071 to 141.073 shall deposit such funds in a bank account separate from any account in which other funds of the political party are maintained. All expenditures from such remitted funds shall be by check.

(The remaining sections of KRS 121.230 deal with requirements for a separate annual report to the Kentucky Registry of Election Finance, the public nature of such reports, and other matters which I do not believe

are relevant to the current advisory opinion request; these sections are therefore not reproduced here.)

The separate account into which these tax check-off funds have been deposited is in a bank which has been designated as a depository by RPK in accordance with 11 CFR 103.1, as our Federal operating account is held there.

Advisory Opinion Requested

RPK requests an advisory opinion as to whether RPK can consider the check-off funds it receives in accordance with Kentucky law to be funds of its Federal committee, by consolidating the receipts and disbursements from the separate check-off account required by Kentucky law with the activity from its current Federal depository accounts. Previous Commission advisory opinions have determined that, as a general rule, such tax check-off funds can be deposited in a state party's Federal account. (Advisory Opinions 1982-17, 1980-103 and 1978-9.) The Commission also has determined that depositing such funds into a state party's Federal account is permissible so long as the funds generated from a state income tax check-off system are derived from sources not prohibited by the Act (Advisory Opinion 1988-33) and the check-off does not increase a taxpayer's tax liability (Advisory Opinion 1983-15). Finally, the Commission has determined that the tax check-off funds distributed by a state to a state political party are not contributions. (Advisory Opinion 1982-17.)

The tax check-off funds which have been distributed to RPK are derived from individual taxpayers, which are permissible sources under the Act; these funds were not derived from corporate funds or other impermissible sources under the Act. (See KRS 141.071(2), which refers only to "individual" income tax.) Furthermore, the Kentucky check-off does not increase or decrease the income tax liability of a taxpayer. (KRS 141.071(2).) Accordingly, the Commission's previous Advisory Opinions appear to indicate that the Kentucky tax check-off funds can be deposited in RPK's Federal account, and not treated as contributions, but as miscellaneous income.

The check-off funds were not deposited directly into our Federal account because Kentucky law requires maintaining a separate, segregated bank account for these funds. (KRS 121.230.) It is permissible under the Act to have separate accounts (11 CFR 103.2). We seek to consolidate the funds which were in this account as of January 1, 1991, and future activity in this account, as part of our Federal account. No funds other than the tax check-off funds, which are derived from individual taxpayers, a permissible source of

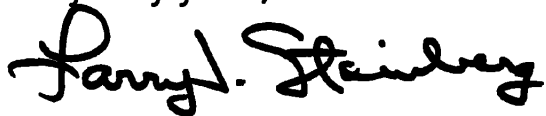
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funds under the Act, have been or will be deposited into this separate account required by Kentucky law. We will report the receipt of the tax check-off funds on FEC Form 3X on Line 17, with appropriate identification on Schedule A.

Please advise us concerning the consolidation and reporting of these funds as part of our Federal account.

If further information is needed concerning our advisory opinion request, I may be reached at my work number (502) 584-2337. Please send any correspondence to me at the address indicated above.

Very truly yours,



Larry J. Steinberg
Treasurer