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COMMISSION

Levy for Congress Committee

Post Office Box 323, Lynbrook, New York 11562
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August 26, 1994

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Mr. Lawrence M. Noble, General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

20 Day -
AOR 1994-29

Dear Mr. Noble:

The undersigned is treasurer of the Levy for Congress Committee. In that capacity, I ask for the commission's ruling as to whether our candidate's Republican and Conservative primaries constitute separate elections, each with their own contribution limits.

The question arises because an individual contributor, who has already donated \$1,000 to Mr. Levy's primary election and \$1,000 to his general election effort, seeks to contribute an additional \$1,000. In addition, a multi-candidate political action committee, which has already contributed \$5,000 to Mr. Levy's primary election effort and \$5,000 to his general election campaign, has expressed interest in making an additional contribution.

The salient facts are as follows:

Mr. Levy is a member of the U.S. House of Representatives and is seeking reelection. Pursuant to New York's Election Law, he has been designated for nomination by the Republican Party. A second candidate has also been designated for the Republican nomination. The nomination will be settled in a primary on September 13th. Under New York law, only enrolled members of the Republican Party are permitted to participate in that balloting.

Mr. Levy has also been designated for nomination by the Conservative Party, a party which is fully recognized by the laws of New York. While no other candidates have been designated for nomination on the Conservative line, Mr. Levy's Republican opponent has filed what New York refers to as Conservative "opportunity to ballot" petitions. The effect of this filing is to force the holding of a full-fledged primary for enrolled members of the Conservative Party in which Mr. Levy's name will appear on the ballot and in which voters may write in the names of other candidates. As is the case with the Republican primary, balloting in the Conservative primary is set for September 13th.

Paid for by Levy for Congress Committee.

Contributions to Levy for Congress Committee are not deductible as charitable contributions for federal income tax purposes.

It is to be pointed out, in connection with the Conservative primary, that Mr. Levy's Republican opponent is campaigning heavily for write-in votes among this group, having printed and mailed political literature to enrolled Conservatives and otherwise engaging in campaign activities.

Our committee would urge the position that, under the circumstances, Mr. Levy is a candidate with respect to three separate elections: the September 13th Republican primary, the September 13th Conservative primary and (assuming his success in one or both primaries) the November 8th general election. We would also urge the position that, with respect to each of these three separate elections, contributors may donate the maximum allowed by law.

For the record, we point out that the question at hand is distinguishable from that which was posed by Sullivan for Senate in 1982 and addressed in the commission's advisory opinion 1982-47 (August 20, 1982). In that case, the candidate was one of three individuals designated for nomination in a contested Republican primary. She also, it appears, was the sole candidate designated for nomination by the Conservative and Right to Life Parties as of the date that the advisory opinion was requested.

Unlike the instant case, in which candidate Levy faces balloting in two separate and distinct party primaries, Mrs. Sullivan's opposition in the Conservative and Right to Life primaries was either anticipatory or hypothetical.

I believe that Mr. Levy's Republican and Conservative primaries each constitute separate elections within the meaning of the Federal Election Campaign Act but would appreciate your advice in this regard.

As the primary elections are less than three weeks away, I would appreciate if the commission would issue its opinion as expeditiously as possible.

Sincerely,



Robert Barra
Treasurer