



REPUBLICAN PARTY OF NEW MEXICO

JOHN DENDAHL
Chairman

April 15, 1998

Mr. Lawrence Noble, Esq.
Office of General Counsel
Federal Election Commission
999 E St NW
Washington, DC 20463

AOR 1998-09

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL COUNSEL

Dear Mr. Noble:

REQUEST FOR EXPEDITED ADVISORY OPINION

The Republican Party of New Mexico ("RPNM"), by and through its Chairman John Dendahl, hereby requests an advisory opinion from the Federal Election Commission. Because this advisory opinion pertains to both a primary election to be held on June 2, 1998, and a special election to be held on June 23, 1998, the RPNM requests that the Commission provide guidance on an expedited basis pursuant to 2 U.S.C. section 437f(a)(2).

New Mexico Congressman Steven Schiff passed away on March 25, 1998. Under New Mexico law, a special election is mandatory whenever a vacancy in the office of United States Representative occurs before the regularly scheduled primary elections. *See* [New Mexico Statutes Annotated Art. I-15-18.]. Because the regularly scheduled primary election is scheduled for June 2, 1998, a special election was required. The special general election to fill Rep. Schiff's unexpired term will be held on June 23, 1998. While there will not be any other Republicans -- neither state office-seekers nor federal candidates -- up for election on June 23, 1998, multiple party candidates will appear on the ballot on the June 2 at all levels (federal, state and local).

In conjunction with the upcoming elections the RPNM intends to finance certain traditional party-building expenditures including generic get-out-the-vote expenditures. These activities will strengthen the party in terms of enabling it to communicate with its supporters, assist in list development for future elections at

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all levels, and promote Republican candidates and their legislative agendas. The proposed activities would be consistent with those undertaken in prior years, and such generic advocacy will persist throughout 1998.

The proposed generic activities may include expenditures for telephone, television, radio and / or direct mail communications urging the general public to "Vote Republican," "Vote the Special Election on June 23." (A sample piece is attached.) Generic expenses might also include absentee ballot applications or voter registration mailings and / or telephone calls prior to each election. These expenditures will not be conducted as exempt volunteer activities pursuant to 2 U.S.C. section 431(9)(B)(viii), but rather as generic voter drive costs permitted at 11 C.F.R. section 106.5(a)(2)(iv).

Federal election law states that a candidate is "clearly identified" when "(A) the name of the candidate appears, (B) a photograph or drawing of the candidate appears, or (C) the identity of the candidate is apparent by unambiguous reference." *See 2 U.S.C. section 431(18)*. The generic communications planned by the RPNM will not mention the name or portray the likeness of any federal candidates. Rather, these communications will merely urge the public to "Vote Republican." Some RPNM ads may combine the generic Vote Republican message with the date of an upcoming election, without referring to specific candidates. *See FEC Advisory Opinion 1985-14 (allowing the DCCC to run ads in specific, targeted districts attacking "the Republicans in Congress" and urging listeners to "Vote Democratic" without treating the expenditures as contributions on behalf of clearly identified candidates)*.

Federal election regulations require political party committees to allocate costs of generic overhead and get-out-the-vote activities between their federal and non-federal accounts, according to their ballot composition formula. *See 11 C.F.R. section 106.5(d)(1)*. At the time of the adoption of these allocation regulations, the Commission stated in its Explanation & Justification that the "broader language of new paragraph 106.5(d)(1) also generally covers years in which a special election is held." *See 55 Fed. Reg. 26064, June 26, 1990; see also FEC Advisory Opinion 1991-25*.

The RPNM requests Commission guidance with respect to its planned expenditures, particularly as they relate to the special election. Specifically, RPNM inquiries:

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- (1) whether traditional generic party expenditures under 11 C.F.R. section 106.5(a)(2)(iv) become contributions to "clearly identified candidates" when combined with the date of a special election, such as telephone calls or mail urging the public to "Vote Republican on June 23."**

- (2) whether generic party communications that mention the date of a special election are financed the same as other generic communications under 11 C.F.R. section 106.5(d)(1).**

Thank you in advance for your prompt consideration of these timely questions. If the Commission or General Counsel's office requires any further information, please contact me promptly at the Republican Party of New Mexico, 2901 Juan Tabo N.E., Suite 116, Albuquerque, NM 87112.



**John Dendahl
New Mexico Republican Party**

SAMPLE MAILER

PHOTO OF STEVE SCHIFF

Continue the Steve Schiff Tradition.

"In the sometimes ugly world of politics, Steve Schiff showed us dignity, honor and a respect for justice.

As a district attorney and Member of Congress, Steve fought for the rights and freedoms most important to our families and our future – freedom from crime, freedom from fear, freedom from want and freedom to achieve our dreams.

On Tuesday, June 23, please vote in the special election for Congress. Vote Republican to continue the work of Steve Schiff."

– Governor Gary Johnson

Vote Republican

Special Election, Tuesday, June 23.

Paid for by the New Mexico Republican Party