



May 24, 2000

AOR 2000-12

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W. - 6th Floor
Washington, D.C. 20463

Re: Request for Advisory Opinion

Dear Mr. Noble:

Pursuant to 2 U.S.C. § 437f, this letter requests an advisory opinion from the Federal Election Commission on behalf of Bill Bradley for President, Inc. and McCain 2000, Inc., the principal campaign committees of Senator Bill Bradley and Senator John McCain, respectively. The two candidates have ended their campaigns for their parties' presidential nominations. However, in the course of these campaigns, Senator Bradley earned 419 delegates and Senator McCain earned 250 (which, under Republican party procedures gives him a majority of seven state delegations, and delegates from another eight states). Both candidates will maintain contact with and receive continued support from those delegates through the summer nominating conventions, and will be otherwise active at these conventions, as described below.

The committees request the Commission to interpret the Presidential Primary Matching Payment Account Act, 26 U.S.C. § 9031 et seq., to allow them to pay costs relating to their convention activities, or alternatively, to approve alternative means of lawful payment of these expenses as set forth below.

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COUNSEL

STATEMENT OF FACTS

Senator Bradley and Senator McCain sought the nominations of the Democratic Party and Republican Party, respectively, for President of the United States in 2000. Each has qualified for and received federal matching funds.

On March 9, 2000, each separately made a public statement indicating that he would not compete in any other primaries and caucuses. The Commission thereafter concluded that neither candidate was actively seeking nomination for election in more than one state, as provided for in 11 C.F.R. § 9033.5. Since then, each candidate's campaign has consistently filed statements with the Commission showing net outstanding campaign obligations.

Neither Senator Bradley nor Senator McCain has released his delegates. Each has preserved the opportunity for a distinctive voice at the convention, and full participation in convention activities. Moreover, each candidate will also participate along with and in support of their delegates in these activities. The convention activities important to the candidates and their delegates include:

- **Travel to and from the convention.**
- **Meetings with delegates and supporters in various state delegations, to thank them for their support and encourage them to remain active on the issues that initially motivated their support.**
- **Attendance at receptions hosted by their campaigns, at which they would have the opportunity to thank their delegates, supporters and staffs, and maintain dialogue and debate with them about the direction of their party on important issues.**
- **Attendance at fundraising events for their campaigns, in order to retire primary election debts.**
- **Participation in the official proceedings of the conventions in various ways, including speeches.**

Each committee would pay for staff and volunteers to prepare for and attend

the convention, to the extent that their presence is necessary to support the candidates in these activities.

DISCUSSION

Generally, the Commission's regulations allow a publicly funded campaign to spend funds on "qualified campaign expenses." 11 C.F.R. § 9034.4(a)(1). The regulations define such expenses as those that (1) are incurred through the candidate's last day of eligibility, (2) are made in connection with his campaign for nomination, and (3) do not violate Federal or state law. Id. § 9032.9(a).

The regulations provide a list of expenses that are presumed to be "qualified campaign expenses" even when incurred after an individual has ceased to be a candidate for purposes of the public financing rules. Grouped under the rubric of "winding-down costs," these expenses are classified generally as "[c]osts associated with the termination of political activity" Id. § 9034.4(a)(3). Such expenses include:

- Office space rental, staff salaries, office supplies and other necessary administrative costs associated with winding down the campaign. Id.
- Costs associated with the Commission's post-election audit of the campaign and compliance with the post-election requirements of the Act. Id.
- Gifts for committee employees, consultants and volunteers in recognition for campaign-related activities or services, so long as the cost of each gift does not exceed \$150 total per individual and the total of all gifts does not exceed \$20,000. Id. § 9034.4(a)(5).

In neither regulations nor advisory opinions has the Commission explicitly addressed whether a withdrawn, publicly funded candidate may use campaign funds to pay for convention-related expenses as part of the winding down process. In the past, the Audit Division has presumed that convention-related expenses are not "qualified campaign expenses." See, e.g., Report of the Audit Division on McGovern for President at 5; Report of the Audit Division on Simon for President at 4; Report of the Audit Division on the Tsongas Committee, Inc. at 63-64.

However, there appears no basis under the statute or Commission rules for prohibiting the payment of convention-related expenses under the circumstances outlined

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above. The convention is the logical, and legally defined, conclusion of the party presidential primary process. Both Senator Bradley and Senator McCain have significant numbers of delegates who remain pledged to support them at the conventions under party rules. Candidates maintain their relationships with delegates they had won, and alongside those delegates, have a continuing interest in full participation in the party convention which is the culmination of the primary campaign process. This convention activity is no less "associated with winding down the campaign" as other, less important activities authorized under Commission rules.

Prior audit reports, even while generally restricting the payment of convention expenses after the end of active candidacy, nonetheless suggest that there are some circumstances under which such expenses could be paid. For example, the audit report from Paul Simon's 1988 presidential campaign suggests that the Audit Division might have approved that campaign's convention expenses had the campaign been able to prove that their purpose was to raise funds to retire campaign debts. Report of the Audit Division on Simon for President at 4. By allowing for some such payments, the audit staff has avoided a blanket rule against the payment of any such expenses. And Commission precedent does not compel the adoption of a blanket rule.

Past elections have seen several publicly funded candidates elect to remain in the race after nomination was no longer possible, while using public funds to pay for convention-related expenses. See, e.g., Report of the Audit Division on Brown for President at 6 (1994); Report of the Audit Division on Buchanan for President at 6 (1994). Candidates in this position also maintained control of the delegates they had won and sought to influence the debate within their parties on issues that were important to them. There is no legal reason – much less reason grounded in sound policy – why such candidates should be allowed to spend candidates' funds to attend the convention, while Senator Bradley and Senator McCain are not.

However, should the Commission nonetheless conclude contrary to our analysis that convention-related expenses are not a "qualified campaign expense" by the requesting committees, then we seek approval for the payment of such convention expenses by other registered federal political committees. We would ask for Commission clarification of any issues associated with this source of alternative payment, such as confirmation that such payments would be operating expenses of the non-Presidential committee unrelated to the Presidential campaign committee. We respectfully suggest that, if the Commission were to find that the Presidential committees may not pay for

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convention expenses as "qualified campaign expenses," an objection is not reasonably made to a non-Presidential federal committee paying for such expenses, as they would not be on behalf of a candidate for federal office. However, as noted above, the requestors' preference is that the Commission find Convention-related expenses to be within the description of permissible "wind-down" expenses for presidential campaign committees, thereby obviating a decision on other permissible sources of funding.

Very truly yours,



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cc: Chairman Thomas
Vice-Chairman Wold
Commissioner Elliott
Commissioner Mason
Commissioner McDonald
Commissioner Sandstrom