

## ADVISORY OPINION

AO 1975-04: DEMOCRATIC NATIONAL COMMITTEE (Democratic Party Telethon)

The Federal Election Commission renders this advisory opinion under 2 U.S.C. 437f in response to a request submitted by a political committee. The request was made public by the Commission and published as AOR 1975-4 in the Federal Register on June 24, 1975 (40 FR 26663). Interested parties were given an opportunity to submit written comments relation to the request.

Sheldon S Cohen, Esquire  
General Counsel  
Democratic National Committee

Dear Mr. Cohen:

Your letter of June 5, 1975, informed the Commission that on July 26 and 27, 1975, the Democratic National Committee ("DNC") will again sponsor a fundraising telethon for the benefit of the Democratic Party over the ABC television network. You further advised that the actual production of the telethon will be conducted by a Production Committee, organized under the California not-for-profit corporation law solely for the purpose of said production. Any amounts expended by the Production Committee will be reimbursed by the DNC out of the gross receipts of the telethon. Additionally, preliminary arrangements for both the production of the telethon and the disbursement of receipts have been worked out between the DNC and participating State Committee (as defined in your letter).

You have requested the Commission to rule on several aspects of the expenditure of funds and receipt of contributions in connection with this telethon. The remainder of this opinion will deal with those requests in the order in which they are raised in your letter.

1. You request a ruling that the endorsement or guarantee by any individual of all or a portion of any bank loan made to the DNC for purposes of financing the production of the telethon will not be treated as a "contribution" as defined in 18 USC 591(e)(1). You request a similar ruling that the guarantee by any individual of a bank loan made to a state central committee, either for use by the state central committee in financing its own telethon obligations, or to enable the state central committee to advance funds to a state committee, will not constitute a contribution. For purposes of this advisory opinion the Commission will treat these requests as substantially equivalent.

It is the Commission's conclusion that a loan or endorsement as described above is a "contribution" as defined in 18 USC 591(e) for purposes of the limitations contained in section 608 of Title 18 of the United States Code.

Section 591(e)(1) defines a contribution as "a gift, subscription, loan, advance, or deposit of money or anything of value, . . . made for the purpose of influencing the nomination for election, or election, any person to Federal office . . ." etc. While the section excepts a bank loan made in the ordinary course of business, it includes an individual's guarantee or endorsement of such a loan.

In your request (and in your subsequent letter dated June 30, 1975), you contend that the described guarantee or endorsement is not loan made for the purpose of influencing the election of a person for federal office, because there is no "direct and substantial relationship between (1) the transfer of money or other things of value and (2) the furtherance of the candidacy of a particular individual, or group of individuals. The Commission does not agree with this contention. The language of the statute nowhere indicates that the purpose stated in section 591 (e) need be direct and substantial or even that it be a principal purpose of the transfer. Ultimately, the election of its designated candidates is the purpose of any transfer of money or other thing of to an organized political party. To rule as you request would lead logically to the conclusion that any contribution to an organized political party would not come within the statutory definition of contribution unless "earmarked" for a particular candidate's campaign. The effect of such ruling would be to disadvantage any third party candidacies which ordinarily coalesce primarily around the candidacy of a named candidate since such a party could not claim that contributions to it were for a purpose other than to influence the election of the party's candidate for Federal office. Neither the elimination of the ceiling for contributions to organized political parties nor the disadvantaging of third party efforts can justifiably be said to be within the intent of Congress in enacting the 1974 amendments.

An analysis of the statutory language supports this reasoning. The word "person" is defined in section 591(g) to mean "an individual or group of persons," while "candidate" is defined, in section 591(b)"an individual who seeks nomination for election, or election, to Federal office . . ." Had Congress wanted to restrict the purpose clause of section 591(e)(1) to particular candidacies it would have used the specifically defined word "candidate" instead of the more generally word "person". We believe this reasoning is further strengthened by the inclusion of the word "any" immediately preceding the word "person" in the purpose clause of section 591(e)(1). That indicates that Congress did not only have particular candidacies in mind but rather was focusing, in addition, on contributions made for the purpose of influencing the election to office of a yet unnamed candidate or group of candidates, e.g., Democrat candidates for Federal office in the 1976 general election. Such would certainly be the end result of a contribution to the DNC no matter what its immediate use. For example, the use of the proceeds of the telethon to retire past debts would serve to strengthen the DNC's credit leading to further opportunities for bank loans, the use of the proceeds of which would be related to Federal elections. The Commission can find no distinction between the use of such contributions and the use of a guarantee or endorsement for the purpose of obtaining a loan to finance a telethon will result in the receipt of such contributions.

Accordingly, it is the Commission's conclusion that the endorsements you describe constitute statutory contributions subject to the \$25,000 limitation on individual contributions in 18 USC 608(b)(3). To the extent that the primary loan remains unpaid, the endorsements shall be considered loans (and thus statutory contributions) from each guarantor or endorser in an amount equal to the proportion of the unpaid balance thereof that each guarantor or endorser bears to the total number of guarantors or endorsers.

2. You request a ruling that, since the telethon effort is a joint venture among the various state central and/or state telethon committees (as described in your letter), the provision of staff support from one committee to another and the general coordinating efforts of the DNC will not be treated as statutory contributions for purposes of either Title 2 or Title 18 of the United States Code.

Based on your description of the activities which will be undertaken by DNC staff members in conjunction with the staffs of the various State Committees, the Commission has concluded that such activities will not constitute a statutory contribution from the DNC to the various State Committees or from the State Committees to the DNC.

3. Your letter requests a ruling that the transfer of net telethon proceeds by a state telethon committee to a non-reporting state central committee will not affect the latter's non-reporting status.

The Commission agrees that the transfer of proceeds by a state telethon committee to a state central committee would not change the latter's status as a non-reporting committee provided, of course, that such funds are not intended to be spent, and, in fact, are not expended to influence the nomination or election of candidates to Federal office. We assume for purposes of this ruling that each state telethon committee will register as a political committee and will report all expenditure receipts, and transfers in connection with its participation in the telethon.

4. The Commission agrees that, for purposes of the July 1975 telethon only, the Production Committee, which has registered as a political committee under 2 USC 433, may be treated as an agent subsidiary of the DNC and, thus, any of its transactions required to be reported under 2 USC 434 may be reported by the DNC. This ruling subject to the condition that the Production Committee maintain detailed records of its receipts and disbursements in accordance with 2 USC 432 (c) and (d) and that such records will be preserved by the DNC. Moreover, records must be available for audit upon request of the Commission.

5. The Commission agrees that all contributions made as a result of or in connection with the telethon should be considered as contribution to the DNC and reported as such in the report filed by the DNC. Consequently, a State Committee will not be required to report the receipt and transmission of a contribution payable to the DNC. However, under 2 USC 432(b) any State Committee and its agents receiving

on behalf of the DNC must render a detailed account thereof to the DNC. Thus, it will be necessary for each State Committee to keep a detailed record of all such contributions as a part of its records subject to audit by the Commission.

In the case of a contribution which is made payable to a State Committee and then endorsed and transmitted to the DNC, the receipt and transmission must be reflected in the State Committee's report.

Finally, the Commission agrees that, where the DNC is in receipt of an individual's contribution which is earmarked for a particular committee or other recipient, the details as to identification of the contributor must be shown in reports of both the DNC and the recipient committee or other person.

6. You request a ruling that, in the case of states which have set up separate telethon committees, and in which the state central committee has made an initial advance to the state telethon committee to enable it to meet expenses, this loan transaction will not effect the status of the state central committee as a non-reporting committee.

The Commission does not agree and has concluded that, if a state central committee, which is presently a non-reporting committee, makes a loan to, or guarantees a loan for, a state telethon committee as described in your letter, such loan or guarantee will constitute an expenditure under 2 USC 431(f) and, if in excess of \$1,000 will cause the state central committee to become a "political committee" under 2 USC 431(d) which must register with and report to the Commission. This conclusion is based on the reasoning contained in the ruling under paragraph 1 above. To hold that a guarantee from an individual is a contribution but that a loan by the central committee of a state political party for the same purpose is not an expenditure would be inconsistent. Further, to deny that this kind of loan was made for the purpose of influencing a Federal election would, in the Commission's opinion, be detrimental to one of the principal purposes of the 1974 amendments, namely to make public all such contributions and expenditures. Finally, the Commission cautions any state central committee to avoid using funds contributed to it by a national bank corporation or labor organization for purposes of the loan transaction as described above

7,8,9. The Commission agrees that the DNC and the various State Committees should report as described in your requests.

10. The Commission agrees with your contention that telethon expenses incurred by the DNC and by participating State Committees should not be counted against the applicable limitations for either the DNC or any State Committee under 18 USC 608(b),(e) and (f).

This advisory opinion is issued on an interim basis only pending the promulgation by the Commission of rules and regulations of general applicability. Any interpretation

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or ruling contained herein is to be construed as limited solely to the facts of the specific advisory opinion requests and should not be relied on as having any precedential significance except as it relates to those facts at the time of its issuance.

Date: 10 JUL 1975

(signed) \_\_\_\_\_  
Thomas B. Curtis  
Chairman for the  
Federal Election Commission