ADVISORY OPINION 1975-74

Contributions By Individuals to National Political Parties
In Non-election Years.

This advisory opinion is rendered under 2 U.S.C. §437f in response to a request submitted by the Republican National Committee (hereafter RNC) which was published as AOR 1975-74 in the October 1, 1975, Federal Register (40 FR 45294). Interested parties were given an opportunity to submit written comments relating to the request. No comments received.

The RNC request raises three questions as to the circumstances under which individual contributions in a non-election year must be carried over to a subsequent election year and charged against the contribution limitations applicable to that year. The three questions which, in effect, seek an interpretation of the second sentence of 18 U.S.C. §608(b)(3) will be discussed in turn.

A. The RNC asks first whether a contributor who in 1975 gives an unearmarked $25,000 contribution to the National Committee of a major political party (such as the Republican National Committee), must apply this against what the contributor may give the National Committee and/or any Federal candidate in 1976.

The Commission concludes that the answer to this question must be no.

18 U.S.C. §608(B)(3) states:

> "No individual shall make contributions aggregating more than $25,000 in any calendar year. For purposes of this paragraph, any contribution made in a year other than the calendar year in which the election is held with respect to which such contribution was made, is considered to be made during the calendar year in which such election is held."

The effect of this provision is to require that certain, non-election year contributions by an individual contributor (as discussed infra) must be subtracted from the $25,000 aggregate limitation applicable to the election year. The carry over or carry back effect applies to contributions in the year immediately preceding or following the election. It may in certain specific circumstances apply in other years as well.

Resolution of the question posed by the RNC necessarily turns on the meaning of the word contribution, as it is used in §608(b)(3).

The Commission has already determined in AO 1975-4 (40 FR 29793) that the word contribution as it is defined in 18 U.S.C. §591(c) and as it is set forth in the first sentence of §608(b)(3) includes not only contributions which are earmarked[1] for furthering the election of a particular candidate(s), but in addition any contributions which are simply turned over to a political party committee for defraying party expenses generally. However, this broad definition is plainly constricted by the literal language of the second sentence of §608(b)(3) which indicates that a contribution must be carried over or back to the year in which "the election is held" only if it is made "with respect to" that election. Since a contribution with respect to an election is tantamount to support of the candidate(s) who is running in that election, the scope of the quoted phrases from §608(b)(3) must be narrowed to contributions which are either earmarked by the donor for the use of a particular candidate or candidates, or which the donor can reasonably expect will be earmarked by the donee committee. Other contributions are deemed to be for general party purposes and are excluded from the scope of the second sentence.

Further support for this view is found in the portion of the House-Senate Conference Report discussing the meaning of the language at issue herein. It was states pertinently:

> "any contribution to a campaign of a candidate in a year other than the calendar year in which the election to which such campaign relates is held shall be considered to be made during the calendar year is which such election is "held" (emphasis added)

The Report makes it clear that the word contribution as referred to in §608(b)(3) is intended to apply only to monies given to a campaign of a candidate--in short, it applies only to earmarked contributions.

Finally, if the word contribution, as it is set forth in the second sentence of §608(b)(3) is construed in terms of the §591(e) definition, the $25,000 ceiling on aggregate individual donations set forth in the first sentence of §608(b)(3), would have to be construed in an unduly restrictive manner. Since every non-election year contribution would be subject to the carry-back/carry-over effect and thus limited, this would mean that a donor could contribute up to the $25,000 ceiling annually only if the contributions were made in an election year and not in any other year. In short, there would be a chilling effect on contributions to political parties in non-election years. Surely, such a result was not intended by the framers of the statute.

It remains to be considered whether a contribution to the RNC which in not earmarked by the donor may nonetheless be construed as earmarked.

---

[1] For the purposes of this advisory opinion the word "earmarked" should be construed to include any contribution directed to a particular Federal candidate by the donor or any other person (as the word is defined in 2 U.S.C. §431(h)) on his behalf. (See discussion, infra). Thus the term is used in a broader sense than the typical earmarking situation where a contribution is made through a conduit or intermediary to a particular Federal candidate.

The Commission is of the view that if an unearmarked contribution is made by a donor to a political committee[2] which devotes the greater part of its resources to supporting a particular Federal candidate or a limited group of such candidates, then that contribution must be treated as earmarked by the donor and must be pro rated against his $1,000 per candidate contribution limit [(18 U.S.C. §608(b)(1)] according to the number of candidates supported by the committee. In this situation there can be no question as to the ultimate destination of the contribution. Accordingly, regardless of the expressed wishes of the donor, his contribution must be construed as earmarked.

However, it should be noted that in the event the political committee comes within the scope of the specialized definition set forth in 18 U.S.C. §608(b)(2)--that is, "an organization registered as a political committee under Section 433, Title 2, United States Code, for a period of not less than 6 months which has received contributions from more than 50 persons and except for any State political party organization, has made contributions to 5 or more candidates for Federal office"--then all contributions to the committee will be construed as unearmarked in the absence of evidence to the contrary. An organization which meets these criteria may support a wide range of candidates and issues and thus cannot be automatically viewed as a mere conduit to the campaign(s) of a small group of Federal candidates. This does not mean that a small, multicandidate committee, which fully satisfies the criteria of §608(b)(2) can never be construed as earmarking its monies to a particular Federal candidate or candidates. However, because such cases will involve varying factual circumstances and will not be susceptible to a neat characterization, the Commission will deal with them as they arise.

With regard to the RNC--as the organization which "is responsible for the day-to-day operation of the . . . (Republican) Party at the national level" (18 U.S.C. §591(k)), it is plainly a multicandidate political committee within the meaning of the definition in §608(b). Because of the scope of the RNC's operations, the Commission assumes (unless there are facts to the contrary) that a contribution to it which is unearmarked by the donor cannot be construed as earmarked because of subsequent use. Thus an individual who donates $25,000 to the RNC in 1975 need not apply this against his 1976 aggregate spending limitation.

B. The second question raised by the RNC involves a situation where a contributor gives unearmarked monies to the RNC in 1975 and the RNC on its own initiative later contributes a sum in excess of $1,000 to a candidate which the contributor wishes to support in 1976. The question is whether the individual contributor is in violation of the law if he makes a further contribution to the same candidate in 1976.

The Commission concludes that the answer to the question is no.

---

[2] Political Committee is defined in 18 U.S.C. §591(d) as "any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000."

As already noted in the discussion of the RNC's first question, an unearmarked individual contribution to a national political organization, such as the RNC, is exempt from the carry over/carry back provision of §608(b)(3). This being true, it follows that any subsequent use of the contribution by the RNC cannot be attributed to the individual. Indeed, since all contributions are presumably commingled by the RNC it would not even be clear whether a contribution to a particular candidate could be attributed to a particular individual. A requirement that the RNC maintain records as to its use of each individual contribution would plainly be unreasonably.

It should also be noted that the Commission's conclusion herein would be different if the circumstances set forth in the second RNC question were reversed--that is, if an individual contributor gave $25,000, in $1,000 components, to particular candidates in 1975 for 1976 elections and then in 1976 wished to contribute to the RNC. In such a situation, the earmarked 1975 contributions would carry over to 1976 and would preclude the contributor from giving any money in that year.

C. The final question asked by the RNC in whether if a contributor gives $1,000 in 1975 to the 1976 primary of a Federal candidate and the candidate does not win the Primary, the $1,000 contribution must be counted against the contributor’s overall $25,000 limitation in 1976.

The Commission is of the view that this question is distinct from the other two asked by the RNC, since it involves a contribution make "with respect to" an election and the word election plainly encompasses primaries as well as general elections [See 18 U.S.C. §591(a)]. The fact that the candidate involved did not win the election is immaterial; there is no requirement in §608(b)(3) that in order for the carry over provision to be triggered, the contributor must support a victorious candidate. Indeed the relevant definition of candidate specifically states that the word refers to "an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected" (18 U.S.C. §591(b), emphasis added). Thus, the $1,000 contribution must be counted against the contributor's overall $25,000 limitation in 1976.

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

October 24, 1975
DATE

(signed)
Joan D. Aikens, Commissioner
Federal Election Commission