

FEC Largely Sidesteps 527 Issue—For Now

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In Federal Election Commission (FEC) Advisory Opinion (AO) 2003-37 issued on February 19, 2004, the FEC largely sidestepped the thorny issue of whether political organizations exempt from taxation under section 527 of the Internal Revenue Code (527s) are covered by the Federal Election Campaign Act, as amended. Instead, the Commission limited its analysis in the AO to entities with the same status as the requestor, Americans for a Better Country (ABC), which is a 527 that also is registered as a political committee with the FEC with federal and non-federal accounts. The Commission deferred all other judgments as to 527s to a rulemaking set to begin in March.

In the AO, the Commission stated that, as a political committee, ABC must pay for public communications that "promote, support, attack, or oppose" a federal candidate solely with federal funds ("hard money") and with no allocation from the non-federal account. An example of such communications includes the following:

President George W. Bush, Senator X, and Representative Y have led the fight in Congress for a stronger defense and stronger economy. Call them and tell them to keep fighting for you.

Moreover, the FEC mandated that ABC pay for get-out-the-vote (GOTV) drives and messages that urge support for general policy positions solely with federal funds or with funds allocated between its federal and non-federal accounts pursuant to FEC regulations. For GOTV messages that promote or support an identified federal candidate, political committees like ABC may use only federal funds. For messages that advocate votes for specific federal candidates, as well as support for the entire party ticket, allocation is necessary. Voter registration and messages are treated in a similar manner. According to the Commission, however, contributions by ABC to federal candidates, in and of themselves, do not cause ABC's

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activities to be coordinated with the recipient candidates.

Finally, the Commission limited ABC's fundraising activities in several ways. First, a political committee like ABC may not solicit non-federal funds by conveying in the solicitation the fact that the funds raised will be used to support or oppose specific federal candidates. In addition, federal candidates and officeholders may raise funds for ABC's non-federal account only within federal contribution limits and from federally permissible sources. A disclaimer developed earlier in FEC Advisory Opinions 2003-3 and 2003-36 must be used in such instances. Moreover, the disclaimer must be used in any written invitation or solicitation that identifies a federal candidate or officeholder as an honored guest, featured speaker or host of the non-federal fundraiser.