AGO 2001-04 CAMPAIGNS; CANDIDATES; ELECTIONS: Federal election law preempts state election law, therefore, certain state officials are not prohibited from soliciting or accepting monetary contributions for a campaign for federal office before, during, or after a regular or special session of the Legislature.

Carson City, March 12, 2001

Susan Morandi, Deputy Secretary for Elections, Secretary of State's Office, 101 North Carson Street, Suite 3, Carson City, Nevada 89701

Dear Ms. Morandi:

You have requested an opinion from this office regarding the applicability of a Nevada Campaign Practices statute to an election campaign for a federal office.

QUESTION

May a member of the Legislature, the lieutenant governor, lieutenant governor-elect, governor, or governor-elect solicit or accept monetary contributions for a campaign for federal office during the time beginning 30 days before the start of a regular session of the Legislature and ending 30 days after the final adjournment of a regular session or from the day after the governor's proclamation calling for a special session and ending 15 days after a special session of the Legislature?

ANALYSIS

NRS 294A.300(1) states:

> It is unlawful for a member of the legislature, the lieutenant governor, the lieutenant governor-elect, the governor or the governor-elect to solicit or accept any monetary contribution, or solicit or accept a commitment to make such a contribution for any political purpose during the period beginning:
> (a) Thirty days before a regular session of the legislature and ending 30 days after the final adjournment of a regular session of the legislature; or
> (b) The day after the governor issues a proclamation calling for a special session of the legislature and ending 15 days after the final adjournment of a special session of the legislature.

Specifically, your question is whether the prohibitions in NRS 294A.300(1) apply to the state officials delineated in NRS 294A.300(1) if these state officials are candidates for a federal office.[1] Thus the relevant inquiry is whether being a candidate for federal office is a political purpose as such term is contemplated in NRS 294A.300(1). The Legislature did not discuss federal candidacy when NRS 294A.300 was originally enacted in 1991, so the legislative history does not provide guidance.

Based upon the foregoing, even though NRS 294A.300(1) does not specifically refer to candidacy, certainly being a candidate for federal office would fall within the ordinary meaning of the phrase "political purpose" used in the statute. Therefore, the prohibitions purport to apply to the state officials listed in NRS 294A.300(1) during the specified times if these people are candidates for federal office. Our analysis does not conclude here, however, because federal law governs candidates for federal office and thus federal election law must also be examined.

The applicable federal election law is 2 U.S.C. § 453 (2000), which states: "The provisions of [the Federal Election Campaign] Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office." The rules prescribed under the Federal Election Campaign Act provide in relevant part:

> (a) The provisions of the Federal Election Campaign Act of 1971, as amended, and rules and regulations issued thereunder, supersede and preempt any provision of State law with respect to election to Federal office.
> (b) Federal law supersedes Sate law concerning the --
> . . . .
> (3) Limitation on contributions and expenditures regarding Federal candidates and political committees.

11 C.F.R. § 108.7 (2001).

In 1996, the United States Court of Appeals for the Eleventh Circuit examined a Georgia statute that prohibited a member of the legislature from accepting campaign contributions during any legislative session. The legislator was contemplating a campaign for federal office. *Teper v. Miller*, 82 F.3d 989, 992 (11th Cir. 1996). The court examined the preemption doctrine and explained that the "doctrine is rooted in the Supremacy Clause [of the United States Constitution] and grows from the premise that when state

[1] "Candidate" is defined in NRS 294A.005 as "[A]ny person: 1. Who files a declaration of candidacy; 2. Who files an acceptance of candidacy; 3. Whose name appears on an official ballot at any election; or 4. Who has received contributions in excess of $100.

law conflicts or interferes with federal law, state law must give way." *Id.* at 993.

In addition, the court analyzed several Federal Election Commission (FEC) advisory opinions, including an opinion directly dealing with the Georgia statute, in which the FEC concluded, "Under the broad preemptive powers of [FECA], only Federal law could limit the time during which a contribution may be made to the Federal election campaign of a State legislator." *Id.* at 998, *citing* Op. FEC 1995-48.

In view of the persuasive reasoning of the *Teper* court and the advisory opinions issued by the Federal Election Commission, this office concludes that the prohibitions stated in NRS 294A.300 are inapplicable to a candidate for federal office because a candidate's ability to seek contributions for federal office is governed by federal law and the applicable federal law contains no prohibition similar to those found in NRS 294A.300(1). We respectfully request that the 2001 Legislature amend NRS 294A.300 to include an exception from the statutory prohibitions found in NRS 294A.300(1) for candidates for federal office.

CONCLUSION

The Federal Election Campaign Act preempts NRS 294A.300. Consequently, a member of the Legislature, the lieutenant governor, lieutenant governor-elect, governor, or governor-elect is not prohibited from soliciting or accepting monetary contributions for a campaign for federal office before, during, or after a regular or special session of the Legislature.

FRANKIE SUE DEL PAPA
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