ADVISORY OPINION 1975-10

Internal Transfers of Funds by Candidates or Committees

This advisory opinion is rendered under 2 U.S.C. SS 437f in response to four requests, published as AOR 1975-10 in the July 9, 1975 Federal Register (40 FR 28944). All of the requests relate to various types of transfers of funds by candidates or political committees. Interested parties were given an opportunity to submit written comments pertaining to the requests.

A. Request of Congressman John J. McFall.

The issue presented is whether a principal campaign committee of a candidate for Federal office may transfer funds from a checking account at a designated campaign depository to a savings account in the same bank or to a savings account in another financial institution which is not a designated campaign depository.

Section 437b(a)(1) of Title 2, U.S. Code, provides that "[e]ach candidate shall designate one or more national or State banks as his campaign depositories." This section further requires that the principal campaign committee shall maintain a checking account at the designated depository, shall deposit any contributions received by it into such account, and shall make all expenditures from said checking account. The statute is silent as to the establishment and use of savings accounts.

It is clear that the statute requires all contributions and all expenditures to pass through the checking account at the designated campaign depository. However, the statute would not preclude a transfer from a checking account to a savings account if full disclosure is made and the committee retains its complete control of the funds so transferred at all times.

To assure compliance with the reporting requirements of 2 U.S.C. 434(b) and the specific language of section 437b(a)(1) that all contributions and all expenditures flow through the checking account at the designated depository, the Commission will require:

(1) that all funds transferred from the checking account described above to any savings account, certificates of deposit or other interest bearing account be reflected clearly on the reporting forms required to be filed with the Commission under 2 U.S.C. 434(b);

(2) that all funds transferred out of the designated checking account, as described above, be eventually transferred back into such account and clearly reflected on the reporting forms required to be filed with the Commission under 2 U.S.C. 434(b);

(3) that any interest earned from funds transferred to any

savings account, certificates of deposit or other interest-bearing account be timely reflected on the reports required to be filed with the Federal Election Commission under 2 U.S.C. 434;

(4) that no expenditures be made from any funds transferred to an account other than the checking account at the designated campaign depository.

B. Request of Thomas Coleman

This request raises the question as to how one should report the transfer of surplus campaign funds remaining from an election campaign for local or State office to a Federal election campaign committee. The commission's response to this question should not be construed as adversely affecting any donor's rights provided by State law as to the use of the donor's original contribution made in connection with a campaign for State or local elective office.

Funds received by a political committee which are transferred from any other source are contributions as defined in 2 U.S.C. 431(e)(3). As such, they are required to be reported under the provisions of 2 U.S.C. §434(b)(2)(4) and (7). Specifically, full information as to the source of all funds transferred to a reporting political committee, as well as the amounts and dates of all individual contributions included in the transfer, must be reported. The Commission agrees that Mr. Coleman may presume that the surplus transferred to his Federal campaign committee is comprised of those individual contributions last received before the State election. The Commission contemplates future regulations that will provide more specific guidance as to the proper reporting of transfers of this type.

The Commission also concludes that the funds to be transferred to the Federal campaign committee may not include any contributions by national banks or corporations, labor organizations, Government contractors, or agents of foreign principals. See 18 U.S.C. §610, 611, and 613. Furthermore, no contributions which exceed $1,000 from any one person and were made after January 1, 1975, may be transferred to the Federal campaign committee. Finally, any funds that were under Mr. Coleman's personal dominion and control, although contributed to a State campaign committee, may be transferred to the Federal campaign committee only to the extent permitted under 18 U.S.C. §608(a).

C. Request of the Circle Club

The question presented is whether a pre-existing political committee with residual funds may obtain consent from the original contributors of these funds to "earmark" their contributions for a specific Federal candidate, and transfer said earmarked contributions to the principal campaign committee of the candidate designated by the contributor.

Under 18 U.S.C. §608(b) persons (other than qualified multicandidate political committees) may not lawfully make contributions to any Federal candidate in excess of

$1,000 with respect to any election. Subsection (b)(2) allows certain political committees to make $5,000 contributions to any Federal candidate with respect to each separate election.

In the event that contributions are earmarked by the donor (or on the donor's behalf), or otherwise directed through an intermediary or conduit to a particular candidate, they are treated as contributions to that candidate from the original donor and are, therefore, subject to applicable limits under section 608(b). Section 608(b)(6) would not apply to situations where donors relinquish complete control over their contributions and do not at a later time regain such control either by actual return of their contribution or, as in this instance, by request of the recipient committee for authorization to earmark a contribution originally given without such restriction. Since in this case the committee will be asserting some control over the earmarking by reason of the fact that it will actively seek to obtain consent from the donors to earmark funds for a specific Federal candidate, it follows that the committee, as well as the original donor, should be regarded as having made the contribution.

Hence, both aspects of the transaction are subject to limitation under 18 U.S.C. 608(b)(1). The committee must regard its involvement in procuring the authorization to earmark as tantamount to its own contribution and, therefore, subject to the $5,000 limit in 18 U.S.C. 608(b)(2), if it is otherwise qualified to make contributions in that amount. Further, such designated contributions must be reported to the Commission and the intended recipient by the political committee as provided in 18 U.S.C. 608(b)(6). Until issuance of final regulations, this may be accomplished by complying with the reporting provisions of 2 U.S.C. 434(b) and the earmarking regulations issued by the previous supervisory officers and adopted by the Commission on an interim basis on June 2, 1975, 40 FR 23833.

D. Request of Senator James Buckley

The Friends of Jim Buckley Committee has established an internal method of allocating political expenditures from "non-political" expenditures for constituent services. The Committee has solicited funds for both political and non-political purposes through its fundraising appeals. Senator Buckley requests an opinion as to:

> (1) whether the Commission will recognize the functional distinction between the two types of expenditures;
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> (2) whether it will be necessary to establish another committee to handle funds expended for constituent services; and
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> (3) if a separate committee is established, whether a separate committee for constituent services will be able to receive funds from the political committee.

The matter of constituent service accounts is controlled by the provisions of

2 U.S.C. 439a and such rules as may be necessary to carry out the provisions of section 439a. The Commission has formally proposed such rules which treat contributions to and expenditures by constituent service funds as transactions of a political committee. See Notice 1975-18, August 5, 1975 (40 FR 32951).

Furthermore, in Advisory Opinion 1975-14, decided August 7, 1975, the Commission held that contributions to constituent service accounts are subject to 18 U.S.C. §608, 610, 611, 613, 614, and 615. Accordingly, the Commission has no objection to transfers of funds from the existing political committee to another one newly organized, but recognizes no functional distinctions between the two types of expenditures described in the request. Finally, the Commission concludes that all expenditures made by either the existing political committee or a new constituent service committee are subject to the spending limits applicable to a candidate under 18 U.S.C. 608(c).

Date _____

_(signed_____
Thomas B. Curtis
Chairman for the
Federal Election Commission