



FEDERAL ELECTION COMMISSION
Washington, DC 20463

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-2

Mr. Tim Shaffer
Shaffer for State Senate Committee
P.O. Box 2121
Butler, PA 16003

Dear Mr. Shaffer:

This responds to your letter of January 10, 1985, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the transfer of funds from your state campaign committee to your Federal campaign committee.

You state that during the 1978 election cycle you were a candidate for Congress from the 25th District of Pennsylvania. You authorized the "Send Shaffer to Congress Committee" as your principal campaign committee. You state that you loaned this committee a total of \$26,950, which remains the only reported outstanding debt owed by the committee. You have since been elected to the Pennsylvania State Senate. For your state campaign you authorized the formation of the "Shaffer for State Senate Committee" under Pennsylvania law. Currently, your state committee has a surplus in excess of \$10,000. To retire part of the debt that your Federal committee owes, you ask whether contributions that were originally made to your state committee may be transferred to your Federal committee.

The Commission considered a similar transfer of funds from a person's state campaign committee to his Federal campaign committee for debt repayment purposes in Advisory Opinion 1984-46. Because any person involved in any specific transaction or activity may rely on an advisory opinion "which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered," 11 CFR 112.5(a), the Commission reiterates its discussion in Advisory Opinion 1984-46 (footnote omitted) concerning your question:

Initially, the Commission notes that a transfer of funds from your state campaign committee to your Federal campaign committee would not be subject to the Act's limitations on contributions as set forth at 2 U.S.C. 441a(a). Commission regulations provide that transfers of funds may be made without limit between "affiliated" committees. 11 CFR 102.6(a). Included within the definition of affiliated committees are all those political committees that are established, financed, maintained, or controlled by the same person or group of persons. See 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2), 110.3(a)(1)(i). Moreover, Commission regulations recognize that two committees may be deemed "affiliates" even though one of them is not a political committee under the Act. 11 CFR 102.6(a). Thus, both your state committee and your Federal committee are controlled by the same person for campaign-related purposes so that the state committee would be deemed affiliated with the Federal committee for the purpose of making the proposed transfer.

While transfers of funds may be made between these committees without limit, such transfers will nevertheless apply toward the threshold for determining whether the state committee is a "political committee" as defined at 11 CFR 100.5. See 11 CFR 102.6(a). Accordingly, if the state committee transfers more than \$1,000 to the Federal committee in a given calendar year, the state committee would become a political committee under the Act. See 2 U.S.C. 431(4)(A); 11 CFR 100.5(a), 102.6(a); Advisory Opinion 1982-52. The state committee would then be required to register and report as a political committee, disclosing on its first report the sources of the funds then in its accounts. See 11 CFR 104.12.

This cash on hand balance would be assumed to be composed of those contributions most recently received by the state committee. It would have to itemize such prior contributions to the extent required by the Act and Commission regulations. See 2 U.S.C. 434(b); 11 CFR 104.3(a). The state committee would also be required to exclude any contributions not permissible under the Act from those funds proposed to be transferred to the Federal committee. See 2 U.S.C. 441a, 441b, 441c, and 441e; 11 CFR 104.12; Advisory Opinions 1984-3 and 1982-52. This means that direct or indirect contributions from corporations, labor organizations, and government contractors, as well as national banks and foreign nationals, must be excluded from the funds to be transferred. 2 U.S.C. 441b, 441c, 441e.

Moreover, since the contribution limits apply to the Federal committee and since the state committee upon becoming a political committee under the Act also becomes affiliated with the Federal committee, the contribution limits of 2 U.S.C. 441a(a) apply to the contributors of the funds held by the state committee. Accordingly, the contributions of any person that are included in the state committee's funds must be aggregated with any contribution made by that person to the Federal committee. For individual contributors, the total may not exceed the \$1,000 per election limit of 2 U.S.C. 441(a)(1)(A). For multi-candidate

committees, the total may not exceed the \$5,000 per election limit of 2 U.S.C. 441a(2)(A). Any portion of a contributor's contribution that exceeds the 441a(a) limits may not be transferred. Instead the amount to be transferred must be reduced to the extent of such excessive amount. For instance, if the same person contributed \$200 to the state committee and \$900 to the Federal committee for the [1978] general election, the amount of state committee funds transferred must be reduced by \$100, the amount by which that person's aggregate contribution to both committees exceeds \$1,000.

When the state committee ascertains the proper amount of funds that it may include in its cash on hand as a political committee and files a report itemizing such funds as required by the Act and regulations, it may also report a transfer of that amount to its affiliated Federal committee. This report may be both the initial and the termination report of the state committee as a Federal political committee. See 11 CFR 102.3. The Federal committee should report its receipt of the transfer as a miscellaneous receipt from an affiliated committee.

The Commission notes, however, that after notification to your committee in December 1981 (and without receiving any objection from your committee), the Commission administratively terminated your committee's reporting obligation pursuant to 11 CFR 102.4. This notice informed your committee that: (1) administrative termination did not relieve the committee of any legal responsibility for the payment of any outstanding debt; (2) the committee must continue to maintain records in accordance with the Act; (3) any residual funds could be used only in accordance with Commission regulations; and (4) raising funds to influence a Federal election or supporting a Federal candidate would void the administrative termination of your committee's reporting obligation. The notice stated that if such occurred, your committee would have to then report all financial activity since the date of its last report filed.¹

Contributions made to a Federal committee to retire debts incurred during a previous election cycle are treated as made for the purpose of influencing a Federal election. See 11 CFR 110.1(g) and Advisory Opinion 1981-22. Accordingly, when you make the transfer from your state committee to your Federal committee, your Federal committee should report the transfer as outlined in the portions of Advisory Opinion 1984-46 quoted in this opinion. It should file such a report on the date that its regularly scheduled report would otherwise have been due for the reporting period(s) during which the proposed transfer(s) occurs, i.e., on July 31, 1985, if the proposed transfer occurs between January 1 and June 30, 1985. See 11 CFR 104.5(a)(2). Your Federal committee should also include in such a report all receipts and disbursements made since its last previous report (which was filed on July 30, 1981, and covered the period from January 1 through June 30, 1981).

Your request is not clear whether you contemplate a single transfer or a series of transfers that may span more than one reporting period. Therefore, your committee should also file a report pursuant to 11 CFR 104.5(a)(2) for any subsequent reporting period in which it receives funds or makes disbursements or otherwise makes changes in the status of its outstanding debt, such as forgiveness or repayment, in any amount. Your committee should also review both its statement of organization with amendments² and current FEC Form 1 to determine if the committee needs

to report any change or correction in such information, pursuant to the current requirements of 11 CFR 102.2(a).

The Commission expresses no opinion concerning the application of any state law which may govern the disposition of the state campaign committee's funds in the manner described in this request, since the Act does not supersede or preempt such a question. See Advisory Opinions 1984-46 and 1978-37.

Also, the Commission expresses no opinion concerning any Federal or state tax ramifications since such questions are outside the Commission's jurisdiction.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activities set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

John Warren McGarry
Chairman of the Federal Election Commission

Enclosures (AOs 1984-46, 1984-3, 1982-52, 1981-22, 1980-114, 1978-37, 1977-43, and FEC Form 1)

1. Thus, administrative termination is distinguishable from committee-initiated termination pursuant to 11 CFR 102.3. See, e.g., Advisory Opinions 1980-114 and 1977-43.
2. Commission records show that your committee's last amendment to its statement of organization was filed on September 29, 1978.