



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 28, 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1998-26

G. Anthony Gelderman, III
Tarcza & Gelderman, L.L.C.
1310 Whitney Building
228 St. Charles Place
New Orleans, LA 70130

Dear Mr. Gelderman:

This responds to your letter dated November 13, 1998, as supplemented by your letter dated December 9, 1998, on behalf of The Friends of Mary Landrieu, Inc. ("the Landrieu Committee"), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the acceptance of a loan repayment from a fund established to defend against an election challenge.

The Landrieu Committee is the principal campaign committee of Senator Mary Landrieu for her campaign for re-election to the U.S. Senate in 2002 and filed its statement of organization with the Commission on November 25, 1996.¹ Ms. Landrieu was first elected to the Senate in the 1996 general election. In March 1997, the Louisiana Contested Election Trust Fund ("the Trust Fund") was established to raise and spend funds necessary to defend against a challenge to the results of the 1996 general election brought by the opposing candidate in that election.² It filed a statement of organization with the Commission on June 6, 1997.³

¹ It originally filed as the Re-Elect Mary Landrieu for Senate Committee. An amended statement of organization filed on November 3, 1998, disclosed the change to the present name.

² After a narrow loss to Ms. Landrieu in the November 1996 election, Ms. Landrieu's opponent, State Representative Woody Jenkins, challenged the results in state court alleging fraud and other unlawful activities. After withdrawing the suit, Mr. Jenkins filed a petition contesting the election, in December 1996, with the U.S. Senate. On October 1, 1997, the Senate Rules Committee voted to end its investigation into the matter.

³ The Trust Fund was first established as the Louisiana Contested Election Fund, Inc. and changed its name to the present title in July 1997.

You state that the Trust Fund was established as a separate vehicle from the Landrieu Committee because Senate Ethics Committee staff informed Senator Landrieu that Senate rules did not permit the Landrieu Committee to receive any funds that were not within the limits of the Act, even if such funds were used to finance a response to an election challenge.

Between March 27 and June 16, 1997, the Landrieu Committee made six loans to the Trust Fund totaling \$122,000.⁴ The Trust Fund repaid \$25,000 to the Landrieu Committee on July 22, 1997, and still owes \$97,000 to the Landrieu Committee. You propose that the Trust Fund make the loan repayment to the Landrieu Committee at this time in one lump sum. The Trust Fund has a \$150,000 line of credit, secured by personal assets of Senator Landrieu, with the First National Bank of Commerce in New Orleans. The Trust Fund would borrow \$97,000 on this line, repay the Landrieu Committee, and thereafter raise funds from individuals to repay the bank on the line of credit.⁵ You indicate that these transactions are intended to provide cash for the Landrieu Committee at this time, and are part of an effort to bring the Trust Fund's activities "closer to conclusion." You ask whether the proposed transaction is permissible under the Act and Commission regulations.

The Act and Commission regulations define the terms "contribution" and "expenditure" to include any gift, loan, or payment of money or anything of value for the purpose of influencing a Federal election. 2 U.S.C. §431(8)(A)(i) and (9)(A)(i); 11 CFR 100.7(a)(1) and 100.8(a)(1). Commission regulations make exceptions from the cited definitions for gifts, loans, or payments made with respect to a recount of the results of a Federal election, or an election contest concerning a Federal election. 11 CFR 100.7(b)(20) and 100.8(b)(20).⁶ In granting these exceptions, however, the regulations also bar the receipt or use of funds prohibited by 11 CFR 110.4(a) and Part 114; that is, funds from corporations, national banks, labor organizations, or foreign nationals. *Id.*

Under the Act, a Federal candidate raising and spending funds to defend against an election challenge may raise funds using her principal campaign committee, or she may set up a separate organizational entity established solely for the purposes of funding the defense effort. See Advisory Opinion 1978-92. A principal campaign committee receiving donations designated for such an effort should establish a separate bank account and the receipts and disbursements of the account would be reportable transactions of the committee, within the categories of "other receipts" and "other disbursements" respectively. 2 U.S.C. §434(b)(2)(J) and (4)(G); 11 CFR 104.3(a)(3)(x)

⁴ The amounts and dates of such loans were as follows: (1) \$3,000 on March 27; (2) \$30,000 on April 7; (3) \$8,000 on April 18; (4) \$23,000 on May 5; (5) \$20,000 on May 23; and (6) \$38,000 on June 16.

⁵ The line of credit is reported on the Trust Fund's 1997 year end report filed with the Commission. According to the report, this \$150,000 line of credit was incurred on December 16, 1997, at an interest rate of 9.5%, and is guaranteed by Senator Landrieu. In describing the line of credit in your request, you state that it is "maintained personally" by Senator Landrieu, and that the draw will effectively constitute a loan to the Trust Fund by Senator Landrieu.

⁶ In explaining these exceptions, the Commission stated that, although such contests are related to elections, they are not Federal elections as defined by the Act. *Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 40 (1977).*

and (b)(2)(vi).⁷ A principal campaign committee, such as the Landrieu Committee, may also disburse funds derived from the contributions it received for Federal elections, i.e., contributions subject to the Act's limitations and prohibitions, for the purpose of defending against an election challenge.

Rather than setting up a separate account of a principal campaign committee, Senator Landrieu organized a separate entity, the Trust Fund, to finance her election challenge defense. The receipts and disbursements of such an entity would not be contributions and expenditures under the Act and the entity would not be required to register and file reports pursuant to the Act. In this case, however, the Trust Fund has registered and files reports with the Commission. As indicated above, any receipts and disbursements of the entity may not come from the sources cited in the exceptions, but the entity may receive and use donations that exceed the various limits (\$1,000, \$5,000, or \$25,000) of 2 U.S.C. §441a(a)(1)-(3).

Assuming that the Trust Fund has not accepted and retained any funds from the listed prohibited sources, the \$97,000 loan repayment by the Trust Fund to a political committee, the Landrieu Committee, would be permissible, under the exception at 11 CFR 100.8(b)(20), as a payment made with respect to an election contest.⁸ The Landrieu Committee's acceptance of the repayment would also be permissible under 11 CFR 100.7(b)(20). Given the fact that the Landrieu Committee made the loans from contributions and not from donations made for the purposes of funding the election challenge, it does not have to place the loan repayment receipts in any special account, and it may use the funds for Federal election influencing purposes.⁹

Although you indicate that the Trust Fund intends to terminate, your request may imply that the Trust Fund proposes to receive the full \$97,000 from the donors to repay the bank on the line of credit, rather than the lower amount required to satisfy its net debt. In view of this, the Commission emphasizes that the Trust Fund is operating under specific exceptions, granted in the regulations, to the definitions of contribution and expenditure. Because the Trust Fund may have on hand, or receive, funds not permitted for Federal elections, it must insure that it does not use such funds to make any "contribution" or "expenditure." See 11 CFR 102.5(b)(1) and definitions in 2 U.S.C. §§431(8), 431(9). Furthermore, the Trust Fund must insure that it complies with all other

⁷ The identification of each donor giving over \$200 in a calendar year would be itemized along with the date and amount. 2 U.S.C. §434(b)(3)(G); 11 CFR 104.3(a)(4)(vi). The identification of each person who has received a disbursement, with respect to a defense of an election challenge, aggregating in excess of \$200 in a calendar year would be itemized along with the date, amount, and purpose. 2 U.S.C. §434(b)(6)(A); 11 CFR 104.3(b)(4)(vi).

⁸ The Commission notes that the Trust Fund's most recent report, the 1998 October Quarterly, discloses, as part of the debts and obligations it owes, that two contributions are to be returned to corporate entities. The Trust Fund shall return or refund these contributions prior to commencing the proposed transactions.

⁹ The Landrieu Committee's ability to accept the loan repayment is also supported by Commission regulations addressing such repayments without specific regard to an election contest situation. The regulations provide that the repayment to a political committee of a loan made by it is not a contribution by the debtor (except to the extent that the interest paid exceeds a commercially reasonable rate), but the repayment of the principal and interest may not be made from funds prohibited by 11 CFR 110.4(a) and Part 114. 11 CFR 100.7(a)(1)(i)(E); see Advisory Opinion 1992-28.

provisions of the Act in the event it makes any contribution or expenditure.¹⁰ 2 U.S.C. §§441a(a)(1), 441b, 441c, 441e, 441f, and 441g; *see* 2 U.S.C. §§431(4)(A), 432, 433, and 434.

The Commission expresses no opinion regarding any tax ramifications of the proposed activity or the application of any rules of the U.S. Senate to the activity because those issues are not within its jurisdiction.

This response constitutes an advisory opinion concerning application of the Act and Commission regulations to the specific transaction or activity set forth in your request. 2 U.S.C. §437f.

Sincerely,

(signed)

Scott E. Thomas
Chairman

Enclosures (AOs 1992-28 and 1978-92)

¹⁰ This advisory opinion does not conclude, expressly or implicitly, that all the transactions presented on the reports of the Trust Fund or the 1996 and 2002 principal campaign committees, including transfers between those committees, are in compliance with the Act or Commission regulations. Instead, the Commission's opinion is based on the facts presented in your request and the situation of the Trust Fund as disclosed in its most recent report filed with the Commission.