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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CONCURRENCE IN ADVISORY OPINION 2000-11

Commissioner David M. Mason

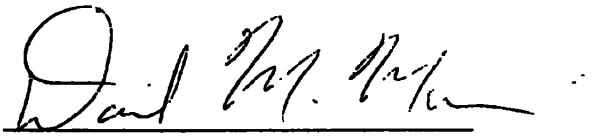
While agreeing with the result and most of the analysis in this advisory opinion, I write to take issue with the implication raised in this statement: "Thus, barring the deposit of funds into the PAC account would not effectuate the intent of contributors who have lawfully relinquished control and possession of the funds." This statement implies that we have the authority to bar the deposit of funds into a committee's account after the ten-day period for depositing contributions has elapsed under 2 USC § 432(b)(1), 11 CFR §§ 102.6(c)(4) and 102.8(b)(2). In AO 1992-29, the Commission directed a committee to return funds to contributors from checks that had not been negotiated or deposited by committee treasurers within ten days of receipt. I believe that opinion should be superseded because we have no authority to bar the deposit of contributions after the ten-day window has expired.

Under §§ 102.6(c)(4), 102.8(b)(2) and 103.3(a), collecting agents and treasurers have a continuing obligation to forward and deposit contributions, respectively. To construe these regulations otherwise would frustrate the intent of contributors (which we did in AO 1992-29) and the FECA's disclosure provisions. The purpose of the ten-day window is to expedite the accurate reporting of contributions, thus preventing committees from hiding both controversial contributions and large war chests until a time when the reporting of them would escape pre-election scrutiny. To forbid the late deposit of contributions does not serve this purpose and the public is thereby prevented from knowing who is supporting which candidates. Committees barred from depositing checks after the ten-day window has expired need only seek replacement checks from contributors, which, in the mean time, only defers public scrutiny until late in the election season or thereafter. If replacement checks cannot be acquired and then reported, the public is deprived of knowing that certain contributors are associated with particular candidates. If the accurate disclosure of contributions is the goal of 2 USC § 432(b)(1), barring their late deposit (and consequent reporting) is counter-productive.

Most importantly, the FECA does not grant to us in the advisory opinion context the power to bar untimely deposited contributions, a form of injunctive relief. In issuing advisory opinions our competence is limited to providing authoritative "application[s] of th[e] Act" to present or prospective activity. 2 USC § 437f(a)(1); 11 CFR 112.1(b).

Even in the enforcement context, the ordinary remedy is a civil penalty. A court-ordered injunction is extraordinary and granted only to avoid irreparable harm, something not necessarily present a mere eleven days after a contribution is received but not deposited. Consequently, it is incumbent upon us to remain within our jurisdiction in issuing advisory opinions if the disclosure provisions of the FECA are to be maintained.

July 14, 2000



David M. Mason,
Commissioner