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VIA CERTIFIED AND RETURN RECEIPT MAIL
Lawrence Norton, Esq.
Federal Election Commission
Office of the General Counsel
999 E Street, NW
Washington, DC 20463

RE: Advisory Opinion Request

Dear Mr. Norton:

Through the undersigned counsel, Dooley for the Valley submits this letter pursuant to 2 U.S.C. § 437(f) to request an Advisory Opinion from the Commission on the application of 2 U.S.C. § 439a(a) to the circumstance of a retiring Member of Congress who wishes to transition his former principal campaign committee into a multi-candidate committee. Specifically, the committee asks whether revised section 439a(a) should be interpreted to prohibit such a change, and whether, in the alternative, the committee can operate as an unauthorized non-multicandidate committee.

FACTS

On September 2, 2003, Congressman Cal Dooley announced his decision not to run for re-election and to retire from Congress. Subsequently, on September 30, 2003, his then-principal campaign committee, Dooley for Congress, sought to change its status from a principal campaign committee to a multi-candidate committee. The committee sought and received guidance on this issue from its Report Analyst, who confirmed that this change was permissible, and that it required only the filing of a Form 1-M Notification of Multi-Candidate Status and an amended Statement of Organization to reflect the new status of the committee. The committee made these filings and later further confirmed with its Report Analyst that it need not file an October Quarterly Report since it was no longer a principal campaign committee.[1]

Since then, two new Advisory Opinions have brought to the committee's attention that the amendment made by section 301 of the Bipartisan Campaign Reform Act of 2002 ("BCRA") to

[1]In these filings, the Committee also changed its name to Dooley for the Valley.

former section 439a(a), removing language allowing the use of campaign funds for "any lawful purpose," could be interpreted as restricting the committee's ability to transition to a multi-candidate committee.[2] The committee has since voluntarily restricted its activities to those which would be consistent with the status of a principal campaign committee, and will proceed on that basis during the pendency of this Advisory Opinion Request.

QUESTIONS PRESENTED

1. Can Dooley for the Valley maintain its present status as a multi-candidate committee?

2. If not, can the committee transition to a non-authorized committee?

3. If not, must the committee revert its status to a principal campaign committee and seek refunds of any contributions made which exceed the limits applicable to a principal campaign committee?

LEGAL ANALYSIS

BCRA's amendment to 2 U.S.C. § 439a did not contemplate this restriction

BCRA amended section 439a, which previously provided that campaign funds could be used for any lawful purpose. The legislative history of BCRA contains no references to any impact the amendment to section 439a(a) may have on the principal campaign committees of retiring members, and recent Commission rulemakings on both the prohibited and permitted uses of campaign funds and multicandidate committees are likewise silent on this issue.

This silence is instructive for more than just the indication that the Commission likewise saw no reason to address the issue of "rolling over" a principal campaign committee into a multi-candidate committee in those contexts. In the past, the Commission has taken a consistent approach to allowing the transition of principal campaign committees of retiring members to multi-candidate status, and that approach should not be overturned sub silentio.

Transition to multi-candidate status should be permissible since Congressman Dooley is no longer a candidate

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[2] Both these opinions, AO 2003-26, dated November 7, 2003, and AO 2003-30, dated December 19, 2003, are distinguishable from the present case for reasons set forth below.

Revised section 439a(a) should not be read to prohibit this transition since Congressman Dooley is no longer a candidate for federal office, and, alternatively, since Congressman Dooley's judgment that this transition best serves his campaign interests brings such a change of status within 439a(a)(1).

Having decided not to run for re-election, Congressman Dooley has made the judgment that it is not necessary for him to maintain a re-election committee. For this reason, the text of 439a(a) supports the transition of his former principal campaign committee to a multi-candidate committee. The revised statute prohibits campaign funds from being used "by the candidate or individual" for purposes other than those enumerated in the statute. Since Congressman Dooley is no longer a candidate, and Dooley for the Valley is no longer an authorized committee acting on behalf of Congressman Dooley, the committee's funds would no longer be used by "the candidate or individual" referenced in and restricted by 439a(a).[3] Accordingly, the plain language of 439a(a) no longer applies to these funds and the committee should be allowed to maintain its multi-candidate status.

Even if the language of 439a(a) does apply, the Commission should honor Congressman Dooley's judgment that transitioning his principal campaign committee into a multi-candidate committee best serves his interests in terminating his campaign, and should consider this to be a decision made "in connection with" his campaign under 439a(a).[4] The Commission has historically granted great deference to candidates in making determinations about how best to use their campaign resources, so long as they do not make personal use of the funds. Allowing this transition would confirm the continued application of that principle after BCRA, and again would reject the suggestion that such fundamental changes in the regulation of candidate committees should be made by implication.

Transition to a non-authorized committee should not be precluded

Alternatively, the committee should be allowed to cease operations as an authorized campaign committee and change its status to that of a non-multicandidate political committee. This would

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[3] This distinguishes the present case from AO 2003-30, since in that AO Senator Fitzgerald proposed to make certain loan repayments and contribution refunds directly from his principal campaign committee, rather than transition it to a multi-candidate committee.

[4] In this way, AO 2003-26 is likewise distinguishable and should not control the outcome here. Unlike Senator Voinovich, the subject of AO 2003-26, Congressman Dooley is no longer a candidate for federal office and, further unlike Senator Voinovich, he judges the proposed transition of committee status to be in connection with his campaign interests.

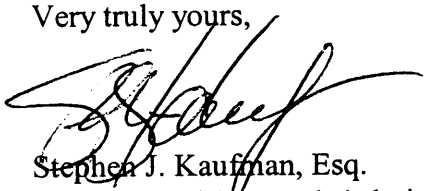
allow the committee to support more than one candidate in excess of the $1,000 definition of "support" established for authorized committees in section 432(e)(3)(B). Even the amended language of 439a(a) does not prohibit an officeholder who is no longer a candidate for federal office from withdrawing his authorization from a particular committee, which here would revert the committee's status away from that of a principal campaign committee. The alternative to this determination would be to force officeholders who are no longer running for office to maintain campaign committees that would be authorized in name only, and operating in a status that is no longer relevant to the circumstances of a retiring Member who is not running for re-election.

CONCLUSION

For the foregoing reasons, it would be arbitrary and unfair to change the Commission's policy on the status of campaign committees of retiring Members without an explicit indication that this change had been made, or to force a retiring Member of Congress to continue to authorize a principal campaign committee to act on his behalf in connection with an election in which he is no longer running. Accordingly, Dooley for the Valley should be allowed to maintain its status as a multi-candidate committee in light of Congressman Dooley's decision to retire from office.

Please do not hesitate to contact the undersigned if you have any questions or would like more information regarding this request.

Very truly yours,



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