

ADVISORY OPINION

FILE: AO 1975-05

SUBJECT: Contributions for campaign debts incurred prior to December 31, 1972.

SUMMARY: Candidates who ran for Federal office in 1970 and 1971 and have remaining outstanding debts, are not subject to contribution and expenditure limitations of 18 U.S.C. 608 as amended by the Federal Election Campaign Act Amendments of 1974, with regard to funds received and expended solely to liquidate these past debts.

This is an advisory opinion in response to two requests, published on June 24, 1975 at 40 FR 26665 (1975), which relate to the applicability of the Federal Election Campaign Act Amendments of 1974 (effective January 1, 1975) to candidates who ran for Federal office in 1970 and have outstanding debts remaining from their respective election campaigns. The question specifically raised is whether current contributions made solely for repayment of debts stemming from Federal election campaigns which ended prior to December 31, 1971, are subject to the contribution and expenditure limits of 18 U.S.C. 608, as amended by the Federal Election Campaign Act of 1971 (effective April 7, 1972) and the Federal Election Campaign Act Amendments of 1974 (hereinafter referred to as the "Act").

Section 608(a)(1) of title 18 United States Code, imposes a limitation on the amount a Federal candidate and his immediate family may expend on behalf of the candidate's campaign. In addition, 18 U.S.C. 608(b) as effective January 1, 1975, limits the amount which individuals and multi-candidate committees may contribute to a particular candidate for Federal office to \$1,000 and \$5,000 respectively, with respect to each separate election. An individual is further limited to contributing no more than \$25,000 to all Federal candidates and political committees during a calendar year. 1/

The only provision of the 1974 Act which makes express reference to the treatment of outstanding campaign debts relative to existing contribution and expenditure limitations is section 101(c)(1) of Public Law 93-443 which provides:

1/ The Commission notes that with respect to elections after January 1, 1975, 18 U.S.C. 608(b) (3) provides in part that "any contribution made in a year other than the calendar year in which the election is held with respect to which such contribution was made, is considered to be made during the calendar year in which such election is held."

Notwithstanding section 608(a) of title 18, United States Code, relating to limitations on expenditures from personal funds, any individual my satisfy or discharge, out of his personal funds or the personal funds of his immediate family, any debt or obligation which is outstanding on the date of enactment of this Act and which was incurred by him or on his behalf by any political committee in connection with any campaign ending before the close of December 31 1972, for election to Federal office." (Emphasis added.)

The Commission believes that the effect of the quoted statutory provisions is to dispense with the expenditure limitation provisions of 18 U.S.C. 608(a)(1), with regard to any Federal election campaign which ended before the close of December 31, 1972. The result is that a candidate or member of his immediate family may expend personal funds in any amount to defray outstanding campaign debts which were incurred in connection with an election campaign ending before the close of December 31, 1972. Such funds may be expended at any time subsequent to December 31, 1972, without regard to the expenditure limitations of 18 U.S.C. 608(a)(1).

Moreover, contributions made by individuals or multi-candidate committees to extinguish pre-1973 campaign debts are not subject to the contribution limitations in 18 U.S.C. 608(b) as amended by the 1974 Act. Any expenditure, from funds contributed for that purpose, made to liquidate a campaign debt incurred before the close of December 31, 1972, is not subject to a candidate's expenditure limitation under 18 U.S.C. 608(c) as amended by the 1974 Act.

However, to assure compliance with the Act, the Commission will require that all solicitations for contributions to be used for extinguishing past debts include clear notice of that purpose and that persons making such contributions exceeding \$100 expressly restrict them in writing for application to past debts. The Commission will further require that contributions to retire campaign debts from 1970 or 1972 must be received by the debtor (candidate, former candidate, or political committee) no later than December 31, 1975, in order to avoid the possibility that such contributions will be counted toward individual contribution limits under the 1974 Act.

In view of the foregoing restrictions placed on contributions to retire past campaign debts, the Commission expects that, to the extent such contributions exceed the amount necessary to retire the debt, they will be returned to the donors.

The Commission advises that any candidate or former candidate who presently has a campaign deficit not heretofore reported by a committee and who wishes to retire that deficit before the Commission' December 31, 1975, deadline, should apprise the Commission of the amount of the deficit within 30 days of publication of this opinion in the Federal Register. The Commission reaches this conclusion regarding a terminal date for such contributions in order to assure that no abuses develop.

Contributions to a candidate (including a former candidate) or the candidate's principal or other campaign committee which are received and expended solely for liquidating campaign debts from a Federal election campaign ending before the close of December 31, 1972, should be reported separately from receipt of funds for a current or upcoming election. Under 2 U.S.C. 434(b)(12) reporting political committees must report their outstanding debts. Candidates are not so required. The Commission now advises those candidates or former candidates who have outstanding campaign debts not currently being reported by a political committee to file reports in the same manner as committees are required to report until such debts are extinguished. The contents of such reports are prescribed by 2 U.S.C. 434(b).

Sources;

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(signed) _____
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