

## ADVISORY OPINION

FILE: 1975-6

SUBJECT: Campaign debts incurred during the period of January 1, 1973 through December 31, 1974.

SUMMARY: Candidates who ran for Federal office in 1974 and have remaining outstanding debts are subject to the limitations of 18 U.S.C. 608(a)(1) with regard to use of personal funds to defray past debts but are not subject to the contribution limitations of 18 U.S.C. 608(b) relating to individual and multi-candidate committees; neither are they subject to the candidate expenditure limitations in 18 U.S.C. 608(c).

This is an advisory opinion in response to requests, published on June 24, 1975 at 40 FR 26665 (1975), which concern the applicability of the Federal Election Campaign Act Amendments of 1974 (effective January 1, 1975 and hereinafter referred to as the "Act"), to candidates who ran for Federal office in 1974, and have outstanding debts remaining from their respective election campaigns. The questions specifically raised are whether Federal candidates may (1) currently pay the debts of their campaign committees out of their personal funds, (2) accept contributions to be used solely to liquidate past campaign debts, and (3) cancel debts owed by the committee to the candidate - all such transactions not being subject to the contribution and expenditure limitations of 18 U.S.C. 608.

Section 608(a)(1) of title 18, United States Code, as amended by the Federal Election Campaign Act of 1971, (effective April 7, 1972) imposed a limitation on the amount a candidate or a member of his immediate family was permitted to expend from personal or family funds in connection with his or her campaigns in one calendar year. The amount of the limitation is dependent on the Federal office sought by the candidate; i.e. \$50,000 for presidential candidates, \$35,000 for Senate candidates, and \$25,000 for House candidates.

Section 101(c)(1) of the 1974 Act (Public Law 93-443) grants a one time exemption from the personal fund limits in 18 U.S.C. 608(a), but the exemption only extends to campaign debts that were outstanding on October 15, 1974, and incurred in connection with any campaign ending before the close of December 31, 1972. Accordingly, debts incurred in connection with campaigns occurring after December 31, 1972 are subject to 18 U.S.C. 608(a), as effective April 7, 1972 and can be retired out of the personal funds of one who was a candidate in a campaign after December 31, 1972, or out of the personal funds of his or her "immediate family," only to the extent that the aggregate limits stated above are not exceeded with respect to that candidate's "campaigns during any calendar year \* \* \*."

As amended by the 1974 Act, 18 U.S.C. 608(b) limits the amount which an individual and a multi-candidate committee may contribute to a particular candidate for

Federal office to \$1,000 and \$5,000, 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.<sup>1/</sup> However, under the 1972 Act, as in effect for campaigns in 1972 and 1974, individuals (other than a candidate and his or her immediate family) and political committees were not subject to any contribution limitations.

Since section 410(a) of the 1974 Amendments (Public Law 93-443) provides that the effective date, with certain exceptions not here relevant, is January 1, 1975, the Commission concludes that the contribution and expenditure limitations prescribed by 18 U.S.C. 608(b) for individuals and multi-candidate committees are inapplicable with respect to election campaigns which occurred prior to January 1, 1975. Furthermore, contributions received and expended specifically for that purpose are not subject to a candidate's expenditure limitation under 18 U.S.C. 608(c) for a 1976 election.

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 1973 and 1974 must be received by the debtor (candidate, former candidate, 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's 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 that occurred prior to January 1, 1975,

<sup>1/</sup> 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."

must 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).

Since the Act, as in effect during the 1974 campaign period, regarded the execution of a promissory note as a contribution (18 U.S.C. 591(e)(2) and 2 U.S.C. 431(e)(2)), payment by the promisor in 1975 would not be regarded as a contribution subject to any of the limitations in 18 U.S.C. 608(b), as amended by the 1974 Act. Similarly, a creditor's cancellation of a campaign debt incurred between January 1, 1973, and December 31, 1974, would not be regarded as a contribution for purposes of 18 U.S.C. 608(b) as amended by the 1974 Act. However, the Commission points out that if the creditor is a national bank, corporation, labor organization, or government contractor, cancellation of the debt may be a "contribution" of the type that has been prohibited under 18 U.S.C. 610 and 611 for many years.

Sources:

Democrats for Harlan, adopted request by Murray T. Johnson  
c/o Democrats for Harlan  
236 Argyle Avenue  
San Antonio, Texas 72809

Representative David Emery Committee  
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Hart for Senate Committee,  
c/o Harold A. Haddon, Esquire  
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16<sup>th</sup> at Grant Street,  
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Representative Richard Kelly, adopted request by  
Representative John J. Rhodes,  
c/o Honorable Richard Kelly,  
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Date: 23 JUL 1975

(signed) \_\_\_\_\_  
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Chairman for the  
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