

ADVISORY OPINION 1975-104

Partnership Agreement Allocating Contributions Equally Among Partners

This advisory opinion is rendered under 2 U.S.C. §437f in response to a request submitted by Senator Claiborne Pell which was published in the November 12, 1975, Federal Register (40 FR 52797). Interested parties were given an opportunity to submit written comments relating to the request. One comment was received.

Senator Pell requests an advisory opinion indicating whether, in light of the Commission's Advisory Opinion 1975-17, a partnership may, by agreement, allocate a contribution equally among the partners and not in accordance with their partnership interests. In Advisory Opinion 1975-17, the Commission decided that:

" . . . when a partnership makes a contribution to a candidate for Federal office it counts against each individual partner's limitation under 18 U.S.C. §608(b)(1) in direct proportion to each partner's share of partnership profits . . ."

The rationale for this decision was that to allocate the contribution otherwise might result in some partners making contributions in the names of other partners, which would constitute a violation of 18 U.S.C. §614, and might permit a partner to indirectly exceed his or her contribution limitation under 18 U.S.C. §608. For example, if a two member partnership in which each partner has an equal share, were to make a \$1,000 contribution and attribute it only to partner A, partner B would have made a \$500 contribution in the name of partner A, since one half of the partnership funds belong to him. This situation could be remedied by either attributing the contribution equally between partners A and B or by reducing only partner A's share of the partnership profits by \$1,000.

Thus, the Commission's opinion is that, while, as was held in Advisory Opinion 1975-17, a contribution by a partnership is generally attributable to each partner in direct proportion to his or her share of the partnership profits, there is no reason why the partners may not agree to attribute the contribution otherwise, provided (1) that only the profits of the partners to whom the contribution is attributed are reduced (or losses increased) and (2) that these partners' profits are reduced (or losses increased) in the exact amount of the portion of the contribution attributed to them.

This advisory opinion is issued on an interim basis pending promulgation by the Commission of rules and regulations or policy statements of general applicability.