

## ADVISORY OPINION 1975-111

### Contributions to State and Local Candidates by A Candidate for Federal Office

This advisory opinion is rendered under 2 U.S.C. §437f in response to a request for an advisory opinion which was submitted by Congressman Otto E. Passman, and was published as AOR 1975-111 in the December 8, 1975, Federal Register (40 FR 57349). Interested parties were given an opportunity to submit written comments relating to the request, but none were received.

The request indicates that following his 1974 race, the Congressman had a \$10,000 surplus. The surplus was used to purchase a Certificate of Deposit (CD) maturing early in 1976. At the time the CD matures, the Congressman intends to commence his 1976 Congressional campaign using the surplus 1974 funds.<sup>1</sup> Before the CD matures, he desires to expend personal funds and later reimburse himself from the surplus funds carried over to his 1976 campaign effort. The first expenditure would be for contributions to candidates in State and local elections in Louisiana. The second expenditure would be an advance for the purchase of campaign items bearing his name and to be used in connection with his 1976 campaign. The Congressman states that he will be a candidate for re-election in 1976.

It is the Commission's opinion that Congressman Passman can make an advance of personal funds for both purposes and later reimburse himself when he commences his Congressional campaign. In making the second expenditure, the Congressman would clearly become a candidate for purposes of the Federal Election Campaign Act of 1971, as amended, and relevant provisions of Title 18, United States Code, within the Commission's jurisdiction.

The Commission is of the view that contributions from the Congressman's personal funds for candidates in state and local elections are not subject to the limitations of 18 U.S.C. §608(a).<sup>2</sup> However, any payment or gift to State or local candidates from campaign funds may be an "expenditure" for purposes of §608(a) and (c) if made under circumstances where the gift or payment (1) may be reasonably viewed as consideration for services that would be rendered (or obtained from others) by the State or local candidates to promote the Congressman's candidacy for nomination or election; (2) is made in relatively close time proximity to a primary or other election in which the Congressman is entered; or (3) is otherwise made in connection with a campaign-related activity of the Congressman which involves the receiving or making of other

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<sup>1</sup> Under 2 U.S.C. §432(f) a Federal candidate is required to designate a principal campaign committee which must have a chairman and treasurer, see generally 2 U.S.C. §432 and 433. The candidate is also required to designate one or more banks as campaign depositories where a checking account must be maintained for receiving contributions and making expenditures, 2 U.S.C. §437b.

<sup>2</sup> Contributions to Federal candidates would, of course, be limited under 18 U.S.C. §608(b).

contributions or expenditures as defined in 2 U.S.C. §431 and 18 U.S.C. §591. For purposes of reporting under 2 U.S.C. §434, all disbursements by the Congressman from campaign funds, including reimbursement to the Congressman for an advance previously made from personal funds (which advance would itself to be reported under §434), would be required to be reported with an appropriate description as to the purpose of the disbursement, the date, identification of the payee, and amount, see 2 U.S.C. §434(b).

With regard to any expenditure from personal funds in 1975, for the purchase of campaign items to be used for the Congressman's 1976 campaign, both the expenditure and the subsequent reimbursement from his 1976 campaign account are to be reported under 2 U.S.C. §434. In addition, the advance from personal funds would be an expenditure under 18 U.S.C. §591(f) and count against the applicable spending limit in 18 U.S.C. §608(c). Also, under 18 U.S.C. §608(a), an advance from personal funds would be charged against the candidate's personal and "immediate family" limitation until it was repaid, and would have to be evidenced by a written instrument fully disclosing the terms and conditions of the advance. See 18 U.S.C. §608(a)(3).

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

Date January 20, 1976

(signed) \_\_\_\_\_  
Neil Staebler  
Vice Chairman for the  
Federal Election Commission