

Re: AOR 1975-133

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23 FEB 1976

AOR 1975-133 issued as
OC 1975-117

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Honorable Quentin N. Burdick
United States Senate
Washington, D. C. 20510

Dear Senator Burdick:

On December 18, 1975, you wrote to the Commission requesting an opinion as to whether excess funds from a 1970 principal campaign committee that are now held in trust could be released by the trustee for the benefit of your 1976 campaign for re-election without regard to the limitations of 18 U.S.C. §608(a)(1)(B).

As for the §608(a) limitations, the Supreme Court of the United States in Buckley v. Valeo, 44 U.S.L.W. 4127, 4143, held that the §608(a) restriction on a candidate's personal expenditures was unconstitutional. Consequently, these limitations would not affect the proposed transfer by your trustee. With respect to the transfer of excess campaign funds, 2 U.S.C. §439a provides that amounts received by a candidate that are in excess of any amount necessary to defray his expenditures may be used for any lawful purpose and no other provision of the Federal Election Campaign Act of 1971, as amended, would prohibit the transfer of residual campaign funds to your 1976 campaign account.

Inasmuch as, in my opinion, it makes no legal difference whether this trust is treated as either funds under your personal dominion and control, or as excess campaign funds, I find it unnecessary to examine and classify this arrangement further.

Pursuant to 2 U.S.C. §434(b), this transfer would have to be properly reported and, of course, the funds transferred could not include any contributions obtained in violation of 18 U.S.C. §§610, 611 and 613.

This response represents an opinion of counsel which the Commission has noted without objection.

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.
General Counsel

62-1101137