July 12, 1976

AO 1975-144[A]

The Honorable James Abourezk
United States Senate
Washington, D. C. 20510

Dear Senator Abourezk:

This letter responds to your request for an opinion with respect to certain provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). In view of the Federal Election Campaign Act Amendments of 1976 it is being handled as an advisory opinion.

You ask several questions relating to excess funds remaining with your 1972 campaign committee, Friends of Jim Abourezk Committee. You state that there are no outstanding debts or obligations from your 1972 campaign; you have used the Friends Committee to accept new contributions and pay "office related expenditures;" you now wish to terminate the Friends Committee and establish an office account to "handle these receipts and expenditures."

The issue posed is whether the funds now held by the Friends Committee may be transferred to a proposed office account. Generally, 2 U.S.C. §439a provides that contributions received by a candidate in excess of the amount needed to defray campaign expenses "and any other amounts contributed to an individual for the purpose of supporting his activities as a holder of Federal office, may be used by such . . . individual . . . to defray any ordinary and necessary expenses incurred by him in connection with his duties as a holder of Federal office . . . ." The transfer you propose would be permissible under this section without securing approval from the original donors of the funds transferred. I presume that the amount transferred does not include contributions made in violation of other applicable provisions of Chapter 14 of Title 2, United States Code, including §§441b, 441c, 441f, and 441g.

The Friends Committee may file a final report of its contributions and expenditures indicating thereon that it wishes to terminate and identifying the transferee of the funds so transferred. See 2 U.S.C. §433(d) and 434(b)(4).

Contributions made in 1973 and 1974 are not subject to any limitations under 2 U.S.C. §441a since the effective dates of the limitations were January 1, 1975, and May 11, 1976. Expenditures by the Friends Committee or the successor office account are not subject to any limitations in view of the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612 (1976), and the 1976 Amendments to the Act which repealed the spending limits formerly applicable to a Senate candidate. A copy of the Commission's recently published notice of proposed rulemaking is enclosed for your information. See Part 113 regarding office accounts.

The Commission does not have jurisdiction over the provisions of 18 U.S.C. §603 and therefore may not render an opinion as to its applicability in the circumstances you outline in your request. That section continues to fall within the exclusive jurisdiction of the Attorney General. Furthermore, we express no opinion as to the application of any relevant rules of the U.S. Senate to these transactions.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Sincerely yours,

(signed)

Vernon W. Thomson
Chairman for the
Federal Election Commission

Enclosure

Re: AOR 1975-144[B]

NOTE: The responsive document to AOR 1975-144[B] is an Opinion of Counsel, not an opinion issued by the Commission, and does not constitute an Advisory Opinion. It is included in this database for archival purposes and may not be relied upon by any person.

22 MAR 1976

AOR 1975-144[B] issued as
OC 1975-131

Mr. Herman Neurohr
Kildee for Congress Committee
170 South Lake Drive
Columbiaville, Michigan 48421

Dear Mr. Newrohr:

This refers to your letter received by the Commission on December 17, 1975, requesting an advisory opinion. You ask for opinions concerning transfers of funds and the proper notice for solicitations of funds.

The Supreme Court recently held in Buckley v. Valeo, 44 U.S.L.W. 4127 (U.S. January 30, 1976), that the Commission as constituted could not be given statutory authority to issue advisory opinions. Although this part of the Court's judgment was stayed for 30 days, and later continued for an additional 20 days, the Commission has determined that it will not issue further advisory opinions under 2. U.S.C. §437f during the stay period. Thus, this letter should be regarded as an opinion of counsel, rather than an advisory opinion.

Your first question concerned the transfer of funds from a State Senate Committee to a Federal campaign committee. You state that there is $1,000 remaining in the State Committee account and of that sum $50.00 does not meet the requirements of the Federal Election Campaign Act of 1971, as amended. $950.00 of the $1,000 may be transferred from the State Committee to the Federal committee as long as all of the contributions constituting the $950 comply with the Federal Election Campaign Act of 1971, as amended. Any contributions exceeding $100 received after April 7, 1972, and which on a first in, first out accounting basis, are included in the $950 must be disclosed in accordance with 2 U.S.C. §434 on the first report filed by the Federal committee to which the transfer is made. However, none of these contributions, if originally made before January 1, 1975, are chargeable against the limits of 18 U.S.C. §608(b), nor do they reduce the amount that a person may contribute after January 1, 1975. The situation is analogous to that described by the Commission in Advisory Opinion 1975-10 (Part B) with respect to the transfer of residual funds from a state campaign account to a Federal account. I enclose a copy of that opinion.

Your second question is addressed to the effects of 18 U.S.C. §612. Under existing law, the Federal Election Commission does not have jurisdiction over that provision of Title 18, and I must respectfully decline to give you an opinion of counsel with regard to it. I would suggest that this portion of your inquiry should be addressed to Thomas Henderson, Government Integrity Section, United States Department of Justice.

Your last question is concerned with the notice that is required to be printed on campaign materials by 2 U.S.C. §435(b). Political committee literature and advertisements which solicit funds must contain the following notice:

> "A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C."

Campaign badges, pins and so forth do not have to contain this notice unless the items themselves solicit contributions. Tickets for a fundraising event, similarly do not have to contain the notice unless the tickets themselves solicit contributions. A letter or advertisement which offers tickets for a fundraising event or campaign items for a contribution must contain the above quoted notice.

This letter is to be regard as an opinion of counsel which the Commission has noted without objection; however, Commission Tiernan objects to issuance of any opinions of counsel during the stay period prescribed in Buckley, supra, and later extended.

Sincerely yours,

(signed)

John G. Murphy, Jr.
General Counsel

Enclosure