

## ADVISORY OPINION 1975-32

### Limitations on Contributions by Multicandidate Committees

The Federal Election Commission renders this advisory opinion under 2 U.S.C. §437f in response to a request submitted by the Committee for Survival of a Free Congress (CSFC), a political committee. The request was published in the Federal Register on August 20, 1975 (40 FR 36533). Interested parties were given an opportunity to submit comments relating to the request, but none were received.

CSFC seeks an advisory opinion as to (1) whether 18 U.S.C. 608(b)(2) prohibits it from contributing more than \$5,000 in connection with any one election to or on behalf of any one candidate and, if so, (2) whether there is any limit on the total aggregate contributions CSFC may make to the national committee of a political party or other political organization.

With regard to the first question, the Commission concludes that the specific language of § 608(b)(2) -- namely that, "no political committee (other than a principal campaign committee) shall make contributions to any candidate with respect to any election for Federal office, which, in the aggregate exceed \$5,000" -- plainly and unequivocally bars a political committee (as the term is defined in §§591(d) and 608(b)(2)) from contributing more than \$5,000 on behalf of a particular Federal candidate per election. Moreover, if CSFC does not qualify as a political committee within the meaning of 18 U.S.C. § 608(b)(2), it would be limited to a \$1,000 contribution. 18 U.S.C. §§591(g) and 608(b) (1).

As for the second question, CSFC is not restricted in the amount it may contribute to the national committee of a political party. Similarly, CSFC may contribute without limitation to other political organizations provided that the donee committee is not a single candidate committee, a candidate's principal campaign committee, or a committee authorized, in writing, by a candidate to accept contributions on his or her behalf.\*/ 18 U.S.C. § 608(b)(4). Contributions to these types of committees are considered contributions to the candidate subject, thereby, to the limitations of 18 U.S.C. §608(b)(1), (2).

Contributions by CSFC to a national committee or other political organization will, however, be subject to limitation if CSFC earmarks or otherwise directs funds to a particular candidate. Section 608(b) (6) of Title 18, United States Code, provides that contributions for a Federal candidate "which are in any way earmarked or otherwise

\*/ If a candidate authorizes, in writing, a multi-candidate committee to accept contributions on his or her behalf then that committee must establish separate records noting the receipt of those contributions which are earmarked for the authorizing candidate. It would then disburse them at the candidate's direction.

directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate." Thus, any contribution made by CSFC either directly or indirectly on behalf of a particular Federal candidate and passed through a national committee or other political organization to that candidate will be regarded as an indirect contribution by CSFC to that candidate.

The Commission establishes the following test of "dominion and control" to be utilized in determining the application of §608(b) restrictions. All contributions made, either directly or indirectly, which are earmarked or otherwise directed by a committee or other person through a "conduit," are treated as contributions to the candidate from the original donor because the donor has exercised "control" over the use of the contribution. Accordingly, for purposes of both reporting and contribution limits, an earmarked contribution must be attributed to its original donor, whether a committee, individual, or other person. The Commission notes, that while transfers of funds from one political committee to another are not prohibited, such transfers may serve to place the two committees under common control. If two or more political committees are under common control, they will be entitled to only one contribution limit between them for any candidate in any election. See AO 1975-45 (40 FR 53722). The factors which establish common control are currently the subject of examination by a Commission task force on multi-candidate political committees and will be set forth in more detail at a future date.

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