ADVISORY OPINION 1975-50

Applicability of 1974 Amendments; Scope
of Corporate Contribution Proscription
in Section 610

This advisory opinion is rendered under 2 U.S.C. §437f in response to a request by the campaign committee of Jeff LaCaze, a former candidate for Federal office. The request was published as AOR 1975-50 in the September 3, 1975 Federal Register (40 FR 40678). No comments were received.

The request states that Mr. LaCaze was a candidate for the House of Representatives from the Sixth District of Louisiana. The results of the general election of November 5, 1974, were disputed and after litigation the State courts ordered a new election for January 7, 1975. Prior to the new election, the LaCaze Committee wrote to the Clerk of the House of Representatives, seeking, in essence, an opinion as to whether the 1974 campaign law amendments were applicable to the election and, in particular, to contributions and expenditures received between January 1-7, 1975. The response, contained in a telegram, quoted from a note to 2 U.S.C. §437c, as amended in 1974, which stated in substance that until the qualification of all the members of the Federal Election Commission and its General Counsel and until the transfer provided for in the subsection, the Clerk of the House of Representatives shall continue to carry out his responsibilities under Title I and Title III of the Federal Election Campaign Act of 1971, as such Titles existed on the day before the enactment of the Act.

The LaCaze Committee asks whether the Advisory Opinion of the Commission as to the applicability of the 1974 Amendments to post-December 31, 1974 expenditures (AO 1975-6 in 40 FR 31316) applies in his particular situation. The Committee also seeks opinions as to the following unrelated issues: (a) whether accrued interest payments on 1974 promissory notes executed in connection with Mr. LaCaze's Congressional campaign, if paid in 1975, are subject to the contribution and expenditure limits of the 1974 Amendments to the Federal election campaign law; (b) whether 18 U.S.C. §610 prohibits a corporation from forgiving or settling prior debts owed by a candidate to the corporation and, if not, whether such debts can be written off as bad debts.

The first question involves an apparently unique, individual situation and as such qualifies as an isolated exception to Advisory Opinion 1975-6. The telegram from the Clerk of the House of Representatives -- although not specifically stating so -- was clearly subject to an interpretation that the contribution and expenditure limitations set forth in Title I of the 1974 law were inapplicable to Mr. LaCaze. As such, given Mr. LaCaze's apparent good faith reliance on the telegram, it is the conclusion of the Commission that he cannot be held to be subject to the contravening Advisory Opinion of the Commission, which was published some seven months after his campaign was concluded. However, although Mr. LaCaze's debts will be treated as if they were subject

to the 1971 Federal Election Campaign Act, all contributions made to retire them are subject to the restrictions set forth in Advisory Opinion 1975-82, approved by the Commission on December 2, 1975, (40 FR _____).

With regard to the second question, a promissory note is in essence a "loan" or "advance" and hence comes within the meaning of the definition of "contribution", as it is set forth in 18 U.S.C. SS 591(e)(1). Since the Commission has already concluded in AO 1975-6 (supra) that the contribution and expenditure limitations set forth in 18 U.S.C. §608 are, with the exception of a candidate's use of personal funds, inapplicable to an election campaign which occurred prior to January 1, 1975, it is clear that this conclusion also applies to promissory notes. Moreover, if the maker of a promissory note signed a commitment to make future interest payments, then these payments may be dated back to the date the note was signed. If this date in Mr. LaCaze's case is prior to January 7, 1975, then it is the Commission's conclusion that the interest payments would not be covered by the 1974 Amendments to the Federal Election Campaign Act, even if the payments were made after January 7, 1975. However, this conclusion does not apply to interest payments made by the candidate himself. These would have to be counted toward the limitation set forth in 18 U.S.C. §608(a)(1)(C). (See AO 1975-6, supra, as modified by AO 1975-82, supra.)

The final question concerns the application of 18 U.S.C. §610 to the settlement or forgiveness of debts owed by a candidate or political committee to corporations. In general, a corporation may not forgive prior debts or settle these debts for less than the amount owed by the candidate or committee, because settlement or forgiveness of a corporate debt is a contribution under §610. However, in certain extenuating circumstances (which shall be subject to Commission scrutiny on a case by case basis), settlement or forgiveness of such a corporate debt may not be considered a contribution under 610 if a showing is made to the Commission that the corporate creditor has treated the outstanding debt of a candidate or political committee in a commercially reasonable manner. Such a showing must include at least the following:

(1) That the initial extension of credit to the candidate or political committee was made in a manner and on terms similar to extensions of credit to a non-political debtor or in accordance with regulations prescribed by a regulatory Board or Commission pursuant to 2 U.S.C. §451;

(2) That the candidate or political committee has undertaken an exhaustive effort to satisfy the outstanding debt; and

(3) The corporate creditor has pursued its remedies in a manner similar in intensity to that employed in pursuit of a non-political debtor.

The question of whether an uncollected debt owed by a candidate or political committee to a corporation may be written off by the corporation as a bad debt for income tax purposes does not involve issues falling within the statutory authority of the Commission.

The Commission notes that the limits in 18 U.S.C. §608(a) applied to Mr. LaCaze's campaign even though he was not subject to the other limits in §608 as added by the 1974 Amendments. This opinion does not address the question of whether Mr. LaCaze would be in violation of 18 U.S.C. §608(a) if, having already expended up to the §608(a) limit, he pays any State court judgments rendered against him personally for a campaign debt.

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.