

## ADVISORY OPINION 1975-82

### Fundraising in 1976 to Retire 1974 Campaign Debt

This advisory opinion is issued pursuant to 2 U.S.C. §437f. The Request was published in the November 4, 1975, Federal Register (40 FR 51354). Interested persons were invited to submit written comments. No comments were received.

The request was submitted by Congressman Fred Richmond and pertains to the retirement of a 1974 campaign debt. Congressman Richmond indicates that his committee will conduct fundraising activities during the early months of 1976 to retire a pre-1975 campaign deficit. The Congressman inquires as to whether such fundraising activities would be charged against his 1976 re-election campaign fund limitations.

The Commission has issued a policy statement and several advisory opinions on pre-1975 campaign debts. (40 FR 32952 and particularly Advisory Opinions 1975-5 and 1975-6, 40 FR 31316). In these opinions and statement, the Commission ruled that "election," as used in 18 U.S.C. §608(b) means any election occurring after January 1, 1975. Contributions made for the sole purpose of retiring campaign debts incurred incident to an election held before January 1, 1975, are not subject to the limits in 18 U.S.C. §608(b), as amended in 1974 and effective January 1, 1975. The expenditure of such contributions is, accordingly, not subject to the limits in 18 U.S.C. §608(c).

However, in order to assure that no abuses developed and to assure compliance with the Federal Election Campaign Act of 1971, as amended, the Commission required, among other things, that contributions to retire pre-1975 campaign debts be received by the debtor (candidate, former candidate, or political committee) no later than December 31, 1975, in order to avoid the possibility that such contributions would be counted toward individual contribution limits under the 1974 Act. In addition, the Commission indicated its expectation that contributions in excess of the amount needed to retire the debt would be returned to the donors.

In light of Congressman Richmond's request, the Commission has reviewed its policy on the retirement of pre-1975 campaign debts. Although the Commission had anticipated that candidates or former candidates would act quickly to extinguish past campaign debts, the Commission notes that there are still numerous outstanding debts from pre-1975 campaigns. The Commission recognizes the responsibility and obligation of candidates and committees to repay past campaign debts.

The Commission, has accordingly determined to modify its policy on the retirement of past campaign debts. Expenditures made after December 31, 1975, to raise or solicit contributions to retire pre-1975 campaign debts will not be subject to the expenditure limitations in 18 U.S.C. §608(c). The solicitation or other fundraising activities must be held separately from solicitations or activities for a 1976 election. All

solicitations or requests for contributions must include clear notice that the funds are being solicited to retire a pre-1975 campaign debt.

Contributors giving in excess of \$100 must expressly earmark the contribution (as by notation on a check) for initial use to retire pre-1975 debts. If the contributions are so restricted, they will not be subject to the contribution limits of 18 U.S.C. §608(b). The Commission notes, however, that the candidate and "immediate family" limits of 18 U.S.C. §608(a) were in effect for 1974 elections and are not waived or modified by this opinion.

Contributions and expenditures made in connection with an effort to retire pre-1975 debts must be reported separately from any 1976 campaign effort. Under 2 U.S.C. §434(b)(12) the committee which incurred and carries the 1974 debt must continuously report until the debt is extinguished. Contributions and expenditures related to retiring a 1974 debt must be received into and expended out of an account that is separate from any account used for the 1976 election. No transfers may be made between accounts until all pre-1975 debts have been extinguished, and then only as provided in the following paragraph.

If excess funds remain after liquidation of the pre-1975 debts, they may be used in any manner consistent with 2 U.S.C. §439a. Moreover, if the donors give specific written authorization, excess funds remaining after the repayment of the 1974 debt may be turned over to the 1976 principal campaign committee. A turnover of excess funds is subject to the limits of 18 U.S.C. §608(b) as applicable to those donors to whom the excess is attributed. The principal campaign committee will be required to report the receipt of excess funds as contributions from the original donors to whom the excess is attributed and not simply, as a transfer from the 1974 debt account or committee. The donors of the excess shall be those persons whose contributions were last received before the excess became evident and who expressly authorized the use of their contributions in connection with a 1976 election.

The Commission notes that this opinion, modifies the holding in AO 1975-52 (40 FR 52794, November 12, 1975), AO 1975-57 (40 FR 51611, November 5, 1975), AO 1975-64 (40 FR 52795, November 12, 1975) AO 1975-68 (40 FR 55601, November 28, 1975) as well as AO's 1975-5 and 1976-6 (40 FR 31316, July 25, 1975).

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