

ADVISORY OPINION 1975-88

Use and Reporting of Excess Funds Raised To Pay 1974 Campaign Debts

This advisory opinion is issued under 2 U.S.C. §437f in response to a request on behalf of the Dodd for Congress committee. This request was published as AOR 1975-88 on November 4, 1975 in the Federal Register (40 FR 51356). Interested persons were invited to submit written comments within 10 days of publication. No comments were received.

This request asks clarification of AO 1975-6 (40 FR 31316, July 25, 1975) as it relates to a later Policy Statement and an Interim Guideline (40 FR 32950 and 32952, August 5, 1975) issued by the Commission and published in the Federal Register. These publications deal with the treatment to be accorded past campaign debts as they relate to the disclosure provisions of the Act and to the limitations on contributions and expenditures contained in Title 18.

In AO 1975-6, the Commission ruled that debts from a 1974 campaign could be liquidated from funds solicited in 1975 without application of the limitations on contributions or expenditures contained in 18 U.S.C. §608(b) and (c). It further indicated that any amounts raised in excess of the amount needed to retire the debt should be returned to the donor. The Interim Guideline and Policy Statement do not address the issue of what should be done with excess funds after payment of debts. The Dodd for Congress Committee has a surplus of funds after retiring debts from a 1974 campaign. It asks how these funds may be used and reported and, if they must be returned to the donors, what procedure must be followed.

In Advisory Opinion 1975-82, (40 FR 1975) the Commission modified its position stated in AO 1975-6 and the Policy Statement and Interim Guideline, supra, with respect to the use of excess funds raised to retire 1974 debts. The Commission stated that such funds may be returned to the donor. Further, contributions which are authorized in writing for such purpose, may be transferred to a 1976 election campaign subject to the disclosure requirements of 2 U.S.C. §432 and 434, and the limitations of 18 U.S.C. §608(b). Lastly, under the provisions of 2 U.S.C. §439a, an incumbent Congressman may use excess funds to defray any ordinary and necessary expenses incurred in connection with his duties as a holder of Federal office, contribute to an organization described in 26 U.S.C. §170(c), or for any other lawful purpose.

In light of that opinion, the Dodd Committee may dispose of the excess funds as above-stated. Should the Dodd Committee decide to return the excess to the donors, the contributions last received should be the first returned on the assumption that the first contributions received are the first expended and that, therefore, residual funds represent the last contributions received. The Dodd Committee does not have to pro-rate the contributions received if it decides to return them, although it may do so.

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

Date: December 3, 1975

(signed) _____
Thomas B. Curtis
Chairman for the
Federal Election Commission