



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 5, 1977

Re: AOR 1976-103

John F. Falconer, Campaign Manager
Bradley for Senate Committee
7235 Wisconsin Avenue
Bethesda, Maryland 20014

Dear Mr. Falconer:

This letter responds to your request of November 2, 1976, for an advisory opinion concerning the application of the contribution limits of the Federal Election Campaign Act of 1971, as amended ("the Act"), to contributions made after the date of the general election to retire campaign debts.

You ask whether persons who have not contributed the maximum amount to the general election campaign of a candidate for the United States Senate "may contribute after the general election date to retire debts;" you also ask whether further contributions, for debt retirement purposes, would now be permissible from persons who did not contribute the maximum amount to the general election. Lastly, you ask whether persons who did not contribute the applicable contribution limit to the primary may now do so, again to help retire campaign debts.

Under the Act, persons¹ and multicandidate political committees² may contribute \$1,000 and \$5,000 respectively, "to any candidate and his authorized political committees with respect to any election for Federal office," 2 U.S.C. §441a(a)(1)(A) and (2)(A). The term "election" includes both a primary and a general election, 2 U.S.C. §431(a); therefore, a Federal candidate participating in two elections could have accepted, before

¹ A "person" includes an individual, partnership, committee, association, and any other organization or group of persons, 2 U.S.C. §431(h).

² A "multicandidate political committee" means a political committee which has been registered with the Commission for a period of six months, which has received contributions from more than fifty persons, and except for any State political party organization, has made contributions to five or more candidates for Federal office, 2 U.S.C. §441a(a)(4).

the primary, \$1,000 or \$5,000 with respect to the primary campaign, and, before the general election, an additional \$1,000 or \$5,000 with respect to the general election campaign.

In addition, the Commission has determined, in its proposed regulations submitted to Congress on August 3, 1976, that contributions may be given to a Federal candidate or committee after an election to retire debts resulting from the election; however, any post-election contribution made to retire a 1976 election debt is subject to the Act's contribution limits, §110.1(g)(2). The Commission has recently approved a policy statement concerning application of the contribution limits to post-general election contributions made for the purpose of retiring 1976 campaign debts. A copy is enclosed for your guidance.

With regard to establishing the date of a candidate's primary election, which is necessary for a determination of both the campaign's primary debts and primary contributions, the Commission notes that in the case of individuals seeking Federal office as independent candidates, or without nomination by a major party, §100.6(b)(2) of the regulations provides:

. . . the primary election is considered to occur, at the choice of the candidate –

(i) The day prescribed by applicable State law as the last day to qualify for a position on the general election ballot, or

(ii) The date of the last major party primary election, caucus or convention, in that State, or

(iii) In the case of non-major parties, the date of the nomination by that party.

Thus, the "primary" date selected by Mr. Bradley before the general election is the date to be used at this time for purposes of identifying the current primary debt and unused primary contribution limits. Of course, as stated in the enclosed Policy Statement, "primary" debts do not need to be determined unless the candidate or committee considers it advantageous to do so in order to raise sufficient funds to retire 1976 campaign debts.

The Act requires that a campaign committee with debts and obligations, which remain outstanding after the election, shall continue to file reports until the debts are extinguished, together with a statement explaining the circumstances under which each debt was extinguished. 2 U.S.C. §434(b)(12) and §104.8 of the regulations. The Commission points out that, with respect to corporate creditors, any settlement of a campaign debt for less than the amount owed may be considered a prohibited

contribution by the corporation, 2 U.S.C. §441b, and therefore is subject to review by the Commission. See §114.10(c) of the regulations (copy enclosed).

A review of reported debts and obligations filed by the Bradley for Senate Committee shows many of the Committee's outstanding obligations are for personal services provided to the campaign. In this connection, the Commission notes that the Act makes several exceptions from the definition of "contribution" for services provided to a candidate or committee: legal or accounting services to insure compliance with the Act, 2 U.S.C. §431(e)(4) and §100.4(b)(12) of the regulations; volunteer services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate and any usual and normal expenses relating to volunteer activity, 2 U.S.C. §431(e)(5)(A) and §110.4(b)(2) and (6) of the regulations; and any unreimbursed travel expenses on behalf of a candidate not exceeding \$500 per election, 2 U.S.C. §431(e)(5)(D) and §100.4(b)(6). Thus, a person to whom a "debt" is owed for services within any of the specified exceptions could forgive that "debt" without thereby making a contribution for purposes of the limits in 2 U.S.C. §441a. Of course, an explanation of such a settlement would need to be submitted as mentioned above.

This response relates to your opinion request but may be regarded as informational only and not as an advisory opinion since it is based in part on proposed regulations of the Commission. These proposed regulations were formally adopted by the Commission and serve as interpretative rules of the Commission as to the meaning of the pertinent statutory language. The proposed rules were transmitted to the Congress on August 3, 1976, see 2 U.S.C. §438(c). For your information I enclose a copy of a recent Commission policy statement regarding those rules.

Sincerely yours,

(signed)
Vernon W. Thomson
Chairman for the
Federal Election Commission

Enclosures [8/25/76 reprint, 10/5/76 policy statement, and policy statement on retiring debts]