



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 20, 1976

AO 1976-26

Wayne C. McGarvey, Treasurer
Neil Rolde for U.S. Congress
Post Office Box 3786
Portland, Maine 04104

Dear Mr. McGarvey:

This letter responds to your letter of April 29, 1976, requesting an opinion reconciling the apparent conflict between Advisory Opinion 1975-65, Federal Register (40 FR 58393, December 16, 1975), and the Supreme Court's discussion of contributions by family members in Buckley v. Valeo, 424 U.S. 1 (1976).

We regret the delay in answering your inquiry, but, subsequent to the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1 (1976), the Commission was required to suspend the issuance of advisory opinions until after the date of its reconstitution. Moreover, 2 U.S.C. §437f, as amended by the Federal Election Campaign Act Amendments of 1976, now requires the Commission to formulate its rules of general applicability by proposing formal regulations, rather than by the advisory opinion process. Proposed regulations were sent to the Congress on August 3, 1976.

In AO 1975-65, the Commission concluded that an immediate family member [as defined previously in 18 U.S.C. §608(a)(2)] could contribute more than \$1,000 to a related Federal candidate provided that the member did not exceed the \$25,000 aggregate limit on contributions by an individual in a calendar year and that the candidate did not surpass the ceiling upon contributions and/or expenditures from personal or family funds [18 U.S.C. §608(a)(1)]. We note that contributions on October 9, 1975, and November 10, 1975, totalling \$3,500 were made to the Rolde for Congress Committee by the candidate's father within the period of time in which AO 1975-65 represented the prevailing interpretation of §608(a). If the \$3,500 did not cause Mr. L. Robert Rolde, the candidate's father, to exceed his \$25,000 annual contribution ceiling (2 U.S.C. §441a(a)(3)) then the contributions would comport with the Commission's understanding of 18 U.S.C. §608(a) before Buckley.

In its opinion in Buckley, issued January 30, 1976, the Supreme Court invalidated the ceilings in §608(a) on campaign expenditures from the candidate's personal funds. Furthermore, in footnote 57, the Court noted, with approval, language from the Conference Report on the 1974 Amendments to the Act which applied the \$1,000 limitation on contributions to any candidate [previously 18 U.S.C. §608(b)(1)] to donations by family members.

It is the intent of the conferees that members of the immediate family of any candidate shall be subject to the contribution limitations established by this legislation. If a candidate for office of Senator, for example, already is in a position to exercise control over funds of a member of his immediate family before he becomes a candidate, then he could draw upon these funds up to the limit of \$35,000. If however, the candidate did not have access to or control over such funds at the time he became a candidate, the immediate family member would not be permitted to grant access or control to the candidate in amounts up to \$35,000, if the immediate family member intends that such amounts are to be used in the campaign of the candidate. The immediate family member would be permitted merely to make contributions to the candidate in amounts no greater than \$1,000 for each election involved. H. Rep. No. 93-1438, p. 58 (1974).

This treatment of expenditures from a candidate's personal funds and of contributions by immediate family members is essentially reflected in the Commission's proposed regulations. I direct you particularly to §110.10 (copy enclosed) which defines a candidate's "personal funds," from which he/she may spend without limit, as the total assets over which the candidate had, prior to candidacy, both legal and rightful title and access and control.

We understand that L. Robert Rolde the candidate's father, contributed \$2,000 on March 12, 1976 (i.e., after the Supreme Court's prevailing interpretation that the \$1,000 limit applied to contributions from immediate family members). Although in excess of the limits now clearly applicable to contributions from members of a candidate's immediate family, the Commission concludes, in view of the uncertainty of the law in this respect during the period between January 30, 1976 and May 11, 1976 (the effective date of the 1976 Amendments), that contributions made during that period by immediate family members need not be returned if they are otherwise in conformity to the holding in AO 1975-65. However, such contributions would be counted against the limits now held to be applicable to family members under the 1976 Amendments and the proposed regulations. This means that L. Robert Rolde could make no further contribution to the candidate with respect to any primary or general election in 1976.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Sincerely yours,

(signed)

Vernon W. Thomson
Chairman for the
Federal Election Commission

Enclosure