

September 28, 1976

AO 1976-74

Mr. Richard L. Ottinger
Re-Elect Ottinger Committee
525 Main Street
New Rochelle, New York 10801

Dear Mr. Ottinger:

This letter is in response to your request of August 25, 1976 for an opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to contributions made in December, 1975, to a candidate for the United States House of Representatives from members of the candidate's family.

Specifically, you ask two questions: (1) whether contributions to your campaign in December of 1975 by members of your family are subject to the \$1,000 contribution limit, and (2) if such family member contributions are subject to this limit, whether contributions by your family in December 1975 in excess of \$1,000 but not exceeding \$25,000 must now be returned by your campaign committee.

The Commission notes that the applicable limitation on the amount an immediate family member could contribute to a Federal candidate has changed during the period between the enactment of the 1974 and 1976 Amendments to the Act. Title 18, United States Code 608(a)(1) permitted a candidate to "make expenditures from his personal funds, or the personal funds of his immediate family" up to the amount designated for the Federal office sought. This language was interpreted by the United States Court of Appeals, in August 1975, as relaxing the §608(b)(1) \$1,000 individual contribution limitation for members of a candidate's immediate family. Buckley v. Valeo, 519 F. 2d 821, 854 (1975). The Commission adopted the appellate court's interpretation in Advisory Opinion 1975-65 (40 FR 58393, December 16, 1975), which held that an immediate family member could lawfully contribute in excess of \$1,000 to a related candidate, so long as his or her total yearly contributions did not exceed \$25,000, the annual aggregate limitation on contributions by an individual. 18 U.S.C. §608(b)(3). Subsequently, in Buckley v. Valeo, 424 U.S. 1, decided on January 30, 1976, the United States Supreme Court held that the contribution limitations contained in the Act were constitutional, and in footnote 57 of the opinion the Court noted that the legislative history of the \$1,000 individual contribution limitation indicated Congress intended it also apply to contributions by family members of a Federal candidate. Lastly, the 1976 Amendments to the Act (effective May 11, 1976) affirmed the general applicability of \$1,000 individual contribution limitation and it is now codified in 2 U.S.C. §441a(a)(1)(A). In explaining the \$50,000 limitation on personal expenditures by Presidential candidates receiving Federal funding, the Joint Explanatory Statement of the Committee of Conference, page 73 of the Conference Report states: "The conference

substitute does not in any way disturb the \$1,000 contribution limit applicable to all individuals, including the immediate family of a candidate." (Emphasis added.) Thus, it is clear that family members are now limited to contributions not in excess of \$1,000 per election to related Federal candidates. See also §110.10(b) of the Commission's proposed regulations.

The above history of the limits on contributions by family members to Federal candidates shows that at different periods of time different limits were thought to apply. Therefore, the Commission determines that family member contributions made to your campaign in December, 1975 that were consistent with the prevailing interpretation of 608(a) would not have to be refunded by your campaign committee. This would mean that members of your "immediate family" (defined previously in 18 U.S.C. 608(a)(2) as a candidate's spouse, child, parent, grandparent, brother, sister and the spouses of such persons) could have contributed in excess of \$1,000 per election to your campaign in December of 1975, so long as total contributions by any member did not exceed the \$25,000 aggregate limit on contributions by an individual in a calendar year.

This response constitutes a statutory 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. 2 U.S.C. §437f.

Sincerely yours,

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