



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 20, 1978

AO 1978-35

Mr. Guy Story, Treasurer
Waller for Senate Committee
P.O. Box 4
Jackson, Mississippi 39205

Dear Mr. Story:

This is in response to your letter of June 8, 1978, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use of funds currently in a trust fund, for the retirement of William Waller's campaign debts.

The facts as stated in your letter and in subsequent letters (dated June 21 and September 8, 1978) with enclosures, from Mr. James Knight on behalf of Mr. Waller, are as follows: State Government Trust Fund ("the Trust") was set up as a private trust fund on May 1, 1971 at which time William Waller was a candidate for Governor of Mississippi. All funds collected during that campaign were placed in the Trust, as were other funds collected to pay off his 1971 gubernatorial campaign debt and to cover his inauguration costs in 1972. The trust agreement provided that in the event Mr. Waller was elected Governor of Mississippi the excess of receipts over expenditures was to be used as follows:

1. Said excess shall be used first to pay any and all expenses in connection with his performance of duties as Governor of the State of Mississippi which may not be provided for from State funds.
2. Any amount not expended in accordance with the paragraph next above shall be reserved for the purpose of payment of any expenditures in connection with any future political campaign in which Waller may be a candidate for any office for a period of seven years from and after the date of this agreement.
3. Any amount remaining unexpended after application to the two paragraphs next preceeding shall, at the end of seven years from the date of this agreement, be contributed to the State of Mississippi.

According to Mr. Knight's letter of September 8, the present balance in the trust fund is approximately \$117,000. Supplemental information which breaks down the balance on a first in, first out basis shows that the bulk of these funds is comprised of interest, sale of items and sale of real estate. Approximately \$5,000 is the residue of contributions from the "Colonels," a group of individuals who gave \$160 each to be a member of an "honorary advisory group to the Governor."

The sum from the real estate is due to the liquidation of a corporation, House Maintenance Fund, Inc., ("House Fund"). The facts regarding the House Fund are set forth. The state of Mississippi owns a large residence known as the Governor's Mansion. This building, over 130 years old, was condemned in 1971 as being unsafe for habitation. Five of Mr. Waller's supporters organized and incorporated the House Fund as a stock corporation and purchased a residence in Jackson, Mississippi for \$125,000 to provide suitable housing for Governor Waller, his family and the Highway Patrolmen needed for his security. Mississippi leased the house for \$200 per month and provided its use to Governor Waller in lieu of the Governor's Mansion. The Trust paid the House Fund \$40,000 annually (on which Mr. Waller paid tax) for maintaining the house and providing for entertainment of various government officials. (There was apparently no State statute authorizing the expenditure of funds for such entertainment.) The stockholders of the House Fund proposed to transfer a percentage of capital stock to Governor Waller each year so that at the conclusion of his term he would have all the stock and could liquidate and dissolve the House Fund. In fact, the stock was given to the Trust and the Trust rather than Governor Waller was the recipient of the liquidating distribution in 1976 when the house was sold for a profit of some \$55,000.

According to Mr. Knight's letter of September 8, no money from the Trust was spent on Mr. Waller's 1978 primary campaign for the United States Senate. You now ask whether the residue in the Trust can be used to pay those 1978 primary campaign debts.

The Commission concludes that the money in the Trust can be used to pay the debts incurred in the 1978 Senate campaign on the basis that for purposes of the Act these funds are "personal funds" as defined in 110.10(b)(1) of the Commission's regulations. Section 110.10 discussing expenditures by candidates defines personal funds for purposes of that section, in part, as:

"Any assets to which at the time he or she became a candidate the candidate had legal and rightful title, or with respect to which the candidate had the right of beneficial enjoyment, under applicable State law, and which the candidate had legal right of access to or control over . . . and . . . income from trusts established before candidacy."

The Trust was originally established in 1971. Mr. Waller did not become a candidate for Federal office until March, 1978. Under the terms of the trust he had, at the time he became a candidate for Federal office, the right of beneficial enjoyment to the funds in the Trust and access to them if used in connection with a political campaign by him. Hence the Trust fund for purposes of 110.10 is personal funds. Any of the interest which has accrued since his candidacy

is also considered personal funds for purposes of the Act as it is income from a trust established before candidacy.

The Commission expresses no opinion concerning possible tax ramifications in the situation described in this opinion since those issues are not within its jurisdiction.

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

Sincerely yours,

(signed)

Joan D. Aikens

Chairman for the

Federal Election Commission