FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 15, 1978

AO 1978-94

Herbert N. Sirott, Esq.
180 North LaSalle Street
Chicago, Illinois 60601

Dear Mr. Sirott:

This responds to your letter of November 14, 1978, requesting an advisory opinion on behalf of Mr. Cirillo McSween, treasurer of the Metcalfe for Congress Committee, the principal campaign committee of the late Congressman Ralph H. Metcalfe, concerning application of the Federal Election Campaign Act of 1971, as amended, ("the Act"), to the proper disposition of campaign funds remaining under the control of Mr. McSween. Commission records indicate that, in addition to his principal campaign committee, Congressman Metcalfe authorized three other campaign committees: the Ralph H. Metcalfe Campaign Committee, the First Congressional District Committee and A Tribute to Ralph Metcalfe Committee.

In your request, you enumerate eight proposed uses of the funds to be considered by the Commission. You propose to transfer the surplus campaign funds: (a) to Ralph H. Metcalfe, Jr. as a candidate for State or local office, (b) to a ward organization not involved in elections of public officials, (c) to a national political party, House or Senate committee, (d) to a State or local political party, (e) to surviving members of the Congressman's immediate family, (f) to employees on his Congressional or Committee payrolls, (g) to a variety of charities, and (h) to Ralph H. M Metcalfe, Jr. as a candidate for Federal office.

The Act provides that surplus campaign funds may be used by an individual or candidate to defray ordinary and necessary expenses incurred in connection with duties of a Federal office. Excess funds may also be donated to qualified charitable organizations or used for "any other lawful purpose." 2 U.S.C. 439a; see also 11 CFR 113.2. Therefore, in the absence of any applicable State or Federal law outside the jurisdiction of the Commission which would make them unlawful, the Commission concludes that transfers of funds from the four Metcalfe committees to a ward organization, to the surviving members of the Congressman's immediate family, to employees on his Congressional or Committee payrolls and to a variety of charities, would constitute a use of campaign funds for "any other lawful purpose" under the Act and would not be subject to the contribution limits of 2 U.S.C. 441a. These transfers may, however, be subject to regulation under applicable State law. (Note: A transfer to a qualified charitable

organization is expressly made lawful by 2 U.S.C. 439a and may not be limited by State law. See 2 U.S.C. 453.*)

The four campaign committees are considered as a single committee for contribution limit purposes by virtue of their affiliation. 11 CFR 100.14(c)(1). Any transfers made by the committees to "political committees" or candidates for Federal office would be subject to the contribution limits of 2 U.S.C. 441a and 11 CFR 110.1. Thus, a transfer to Ralph H. Metcalfe, Jr. as a candidate for Federal office or to his Federal campaign committee may not exceed $1,000 per election. 2 U.S.C. 441a(a)(1)(A); 11 CFR 110.1(a)(1). A transfer to a political committee established and maintained by a national political party may not exceed $20,000 in a calendar year, however, certain national party committees, i.e., the national party committee, the House campaign committee and the Senate campaign committee, are considered separate for contribution limit purposes and thus, each of these committees may receive up to $20,000 in a calendar year from the Metcalfe campaign committees. 2 U.S.C. 441a(a)(1)(B); 11 CFR 110.1(b). A transfer to a State or local committee of a political party would not be limited under the Act unless the party committee receiving the transfer was a "political committee" as defined by the Act. 2 U.S.C. 431(d). In that event, the transfer would be limited to $5,000 per calendar year. 2 U.S.C. 441a (a)(1)(C); 11 CFR 110.1(c), see also 11 CFR 102.6.

The Act would not limit transfers by the described committees to Ralph H. Metcalfe, Jr. as a candidate for State or local office or his campaign committee for such office, since the limitations of 2 U.S.C. 441a do not apply to contributions made to or on behalf of candidates for State or local office. The Commission notes, however, that in this situation where the Act does not apply, State law regulating activity connected with State and local elections may be applicable. See Advisory Opinion 1978-37 (copy enclosed).

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

This response constitutes an advisory opinion concerning 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

Enclosures

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* In a letter (copy enclosed) responding to Advisory Opinion Request 1976-10, the Commission concluded that under certain circumstances State law could regulate lawful uses of excess campaign funds and such regulation would not be superceded and preempted by 2 U.S.C. 453. Illinois has a statute somewhat similar to the Kentucky statute reviewed in Re: AOR 1976-10 although it is doubtful that the Illinois statute applies to the Metcalfe committees. See ILL. ANN. STAT. Ch. 46, §9-5 (Smith-Hurd).