



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 18, 1979

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-11

The Honorable Birch Bayh
United States Senate
363 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Bayh:

This responds to your letter of March 28, 1979, requesting an advisory opinion on behalf of your principal campaign committee, the Hoosiers for Birch Bayh Committee ("the Committee") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the status of a contribution recently made to the Committee.

You explain in your letter that in 1968, the Lake County Democratic Campaign Committee ("LCDCC") organized a fundraising event in your honor to raise contributions for your 1968 Senate campaign. The proceeds of the fundraiser were donated in 1968 by bank cashier's check to your 1968 campaign committee, but you state that apparently the check was "never received or deposited" by your 1968 campaign committee; in any event, the check "never cleared the account" of LCDCC. The funds remained in the bank's possession in the account of LCDCC until recently when the LCDCC treasurer was notified by bank officials that the funds would soon escheat to the State. The treasurer, who has since stated that records of contributors to the fundraiser do not exist, then drew another check in the same amount, \$3,044.07, and forwarded it to your current principal campaign committee. You indicate that the Committee intends to use the funds only for the purpose of defraying your nonreimbursable office expenses pursuant to Rule XLVI of the U.S. Senate's Code of Official Conduct, and you ask specifically whether it is permissible under the Act for the Committee to retain these funds for non-campaign related spending.

Under 2 U.S.C. 439a and Part 113 of Commission regulations a holder of Federal office may use excess campaign contributions to defray "any ordinary and necessary expenses incurred by him in connection with his duties as a holder of Federal office". The source of these funds and the purposes for which they are spent must however be reported either in an office account report

which you file pursuant to 11 CFR 113.4 or in a report filed by the Committee under 2 U.S.C. 434 and Part 104 of Commission regulations.

In the specific factual circumstances you present regarding the source of these funds and the restricted purposes for which they will be expended, the Commission concludes that the Committee may regard the funds from LCDCC as excess campaign funds from 1968 and may spend them to defray office expenses pursuant to 11 CFR 113.2(a).

The funds from LCDCC should be characterized for reporting purposes as a miscellaneous receipt under 2 U.S.C. 434(b)(7) rather than as a contribution or a transfer from LCDCC. Furthermore, the Committee should clearly state the described nature of the receipt and the Committee's intended restricted use of the funds; that is, payment of your nonreimbursable office expenses incurred in connection with your duties as a holder of Federal office. See Advisory Opinions 1977-50 and 1977-11, copies enclosed. Committee disbursements from the LCDCC funds should also be disclosed giving the same details required for "expenditures", with express reference made to the fact that the reported disbursement is being made (in an accounting sense) from the funds given by LCDCC. See 2 U.S.C. 434(b)(9) and 11 CFR 104.2(b)(9).

The Commission expresses no opinion as to possible application of the Standing Rules of the Senate to the situation you have described; neither does the Commission express any opinion regarding possible tax ramifications since these issues are outside 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

Enclosures (AO 1977-50 and 1977-11)