



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 7, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-114

Mr. Ralph T. DeFranco
Attorney at Law
720 Leader Building
Sixth and Superior Avenue
Cleveland, Ohio 44114

Dear Mr. DeFranco:

This responds to your letter of September 15, 1980, requesting an advisory opinion on behalf of the Calabrese for Congress Committee ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a refund that the Committee has received after termination.

You state that the Committee filed a termination report on July 15, 1980. Thereafter, on August 18, 1980, the Committee received a refund from the Ohio Bell Telephone Company in two separate checks, one for \$18.72 dated June 30, 1980, and one for \$507.83, dated July 28, 1980, and payable to Bill Robinson, one of the Committee's campaign coordinators, who subsequently forwarded the checks to your attention. You add that Mr. Calabrese gave the Committee a personal loan of \$10,000 which was thereafter forgiven by him so that a termination report could be filed with the Commission. You state that the Committee wishes to use this \$526.55 refund to repay part of the loan made by Mr. Calabrese. You ask whether such a use of the refund by the Committee would be permissible under the Act in light of the fact that the Committee has filed a termination report.

As you know, under the Act and the Commission's regulations, a principal campaign committee which wishes to terminate and end its reporting obligations may do so upon filing a termination report when all outstanding debts and obligations owed to or by it are extinguished. See 11 CFR 102.3 and 104.1(a). In Advisory Opinion 1979-5 (see copy enclosed), the Commission considered a situation similar to the one presented here, and concluded that it was permissible under the Act for the principal campaign committee to assign to the candidate

refunds that were owed to the committee in partial repayment of the loans made by the candidate to the committee.

Another issue raised by your request is whether the proposed disposition of the refund constitutes a permissible use of campaign funds under 2 U.S.C. 439a, which prohibits the use of "excess campaign funds" for any personal use by a candidate who was not a member of Congress on January 8, 1980. In this respect, the Commission notes that the Committee, upon receipt of the loan from the candidate and pursuant to 11 CFR 104.11, has continuously reported that amount as being a "loan" and not a "contribution". If Mr. Calabrese had "contributed" the money to the Committee, the Committee would have no outstanding debts or obligations and any refund received would have been considered as an amount "in excess of any amount necessary to defray... expenditures." See 2 U.S.C. 439a, and compare Advisory Opinion 1977-58, copy enclosed. Accordingly, the Commission concludes that it is permissible for the Committee to pay the refund to Mr. Calabrese so long as the receipt of the refund by the Committee and its payment to him are properly reported in an amended termination report. See 2 U.S.C. 434 and 11 CFR 104.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity described in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Max L. Friedersdorf
Chairman for the
Federal Election Commission

Enclosures (AOs 1979-5, 1977-58)