



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 22, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-122

Mr. Lawrence A. Mandelker
Baskin and Sears
122 East 42nd Street
New York, New York 10168

Dear Mr. Mandelker:

This responds to your letter of October 9, 1980 on behalf of New Yorkers for Myerson, Inc. ("the Committee"), concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use of certain funds to pay debts owned by the Committee.

Your letter states that the Committee is the principal campaign committee for Bess Myerson who was recently defeated in New York's Democratic Primary for the United States Senate. You indicate that prior to the primary election (held on September 9, 1980), the Committee received a number of contributions which were earmarked for the general election. All such contributions were maintained in a separate account as authorized by 11 CFR 102.9(e). Each donor had already contributed up to the \$1,000 maximum for the primary election. You state that a number of outstanding bills remain from the unsuccessful primary campaign. In addition, some costs will be incurred in order to close down the campaign headquarters (e.g. restoration to pre-occupancy condition). Under these circumstances you ask whether the earmarked contributions must be returned to the donors or whether those funds may be used to pay for closing down expenses or outstanding bills from the primary campaign.

As you know, it is unlawful under the Act for an individual to make contributions to any candidate or his/her authorized committee with respect to any election to Federal office which in the aggregate exceed \$1,000. 2 U.S.C. 441(a)(1)(A) and 11 CFR 110.1(a)(1). It is however, permissible for a person to contribute to a principal campaign committee for the general election prior to the primary election so long as the contribution is designated for the general election and the committee employs an acceptable accounting method to distinguish between primary and general election related contributions. See 11 CFR 110.1(a)(2) and 102.9(e).

Because the candidate was involved only in the primary election, all of the debts and obligations of the Committee exist with respect to that election and a single contribution limit of \$1,000 applies with respect to contributions by individuals. Moreover, as you have indicated in your request, the contributions earmarked for the general election were donated by individuals who had exhausted their contribution limits with respect to the primary election. Under these circumstances the Commission concludes that the use of those earmarked contributions by the Committee to pay debts and obligations which remain from the primary election is prohibited under the Act since such use would result in those individuals making contributions with respect to the primary election in excess of the \$1,000 limit prescribed by 2 U.S.C. 441a(a)(1)(A).

Furthermore, because Mrs. Myerson did not participate in the general election, no separate contribution limit with respect to the general election is available to contributors to the Committee. * Accordingly, the Commission concludes that the Committee may not treat the general election contributions as "excess campaign funds" and must return those contributions to the contributors. This conclusion is based on the Commission's holding in Advisory Opinion 1980-68. See copy enclosed. In that opinion the Commission permitted a candidate's campaign committee to accept contributions for a primary run-off election prior to the date of a preceding primary election so long as any run-off election contributions were returned to the contributors if the candidate failed to qualify for participation in the run-off.

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

Sincerely yours,

(signed)

John W. McGarry
Vice Chairman for the
Federal Election Commission

Enclosure (AO 1980-68)

* Senator Cannon, speaking on the conference report to the 1974 amendment to the Act stated: "Individuals cannot give to any candidate or political committee supporting that candidate more than \$1,000 for each election in which the candidate participates..." 120 Cong. Rec. S18,525 (daily ed. October 8, 1974). (Emphasis added).