



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 4, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-130

Lance H. Olson
Olson & Connelly
926 J Building, Suite 810
Sacramento, California 95814

Dear Mr. Olson:

This responds to your letter dated October 27, 1980, requesting an advisory opinion on behalf of the Fazio for Congress Campaign Committee ("the Fazio Committee"), concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the repayment of a loan made by the Committee.

Your request states that the Fazio Committee, the registered principal campaign committee of Congressman Vic Fazio, has made a loan in the amount of \$5,000 to the Garcia for Assembly Committee ("the Garcia Committee"), the campaign committee of a candidate for the California State Legislature. The Garcia Committee is not a "political committee" under the Act. The Fazio Committee is concerned about the ability of the Garcia Committee to repay the loan when it comes due and in this regard, the Fazio Committee poses three questions for Commission determination.

- (a) May the Garcia Committee use funds which may have been commingled in its account with corporate or labor organization contributions as a source of repayment of the loan?
- (b) Would the loan repayment by the Garcia Committee be subject to the contribution limits of the Act?
- (c) Would the answers to the first two questions be different if the Fazio Committee charged interest on the loan?

The Commission's regulations provide that repayment of the principal amount of a loan made by a political committee is not considered to be a contribution by the debtor to the lender committee. The regulations further provide that such repayment must be made with funds which are subject to the prohibitions of 11 CFR 110.4(a) and Part 114. See 11 CFR 100.7(a)(1)(i)(D). Thus, with respect to your first question regarding the source of repayment funds, the regulations require that the Garcia Committee repay the loan with funds which were not donated to it by corporations or labor organizations. See 2 U.S.C. 441b and 11 CFR Part 114.

The fact that the Garcia campaign committee may have received corporate or union funds does not preclude the loan repayment. Under Commission regulations at 11 CFR 102.5(b), organizations which are not political committees under the Act but which make "contributions" or "expenditures" are permitted to:

demonstrate through a reasonable accounting method that whenever such organization makes a contribution [or] expenditure... that organization has received sufficient funds subject to the limitations and prohibitions of the Act to make such contribution, expenditure or payment. 11 CFR 102.5(b)(1)(ii).

This regulation further requires that the organization keep records available for Commission examination. Since the quoted regulation permits "contributions" and "expenditures" by organizations other than "political committees" under the stated conditions, it follows that the making of a loan repayment which is neither a contribution nor made by a "political committee" should be treated in the same manner. Accordingly, the Commission concludes that while the Garcia Committee may not use corporate or labor organization funds to repay the loan, the mere fact that such funds were received by the Garcia Committee would not bar repayment. However, the Garcia Committee must be able to "demonstrate through a reasonable accounting method" that sufficient funds have been received from other sources not prohibited by 11 CFR Part 114 (and 11 CFR 110.4(a)) when the loan is repaid. The Commission concludes further that the Garcia Committee must keep records of amounts received or expended and must make such records available for examination if requested by the Commission. See 11 CFR 102.5(b)(1)(ii).

In response to your second question (b) regarding contribution limitations under 2 U.S.C. 441a, Commission regulations indicate that repayment of the principal amount of the loan by the Garcia Committee is not a contribution to the Fazio Committee. 11 CFR 100.7(a)(1)(i)(D). Thus, the repayment is not subject to the contribution limits of 2 U.S.C. 441a and 11 CFR Part 110.* The repayment must, however, be made with funds which are subject to the prohibitions of 11 CFR Part 114. (See discussion in answer to your first question.)

With respect to your last question (c) regarding interest charged by the Fazio Committee, the answers to questions (a) and (b) would not be different if the Fazio Committee charged a commercially reasonable interest rate which prevailed at the time the loan was made. However, if the Fazio Committee charged interest at a rate which exceeded a commercially reasonable rate, the payment of interest by the Garcia Committee would be a contribution to the Fazio Committee

* In this case the \$5,000 loan made by the Fazio Committee is not subject to the limits of 2 U.S.C. 441a since the Garcia committee is not within any category of contribution recipients subject to the limits of 441a.

to the extent that the interest paid exceeded a commercially reasonable rate. 11 CFR 100.7(a)(1)(i)(D). The regulations also require that all payments of interest be made from funds subject to the prohibitions of 11 CFR 110.4(a) and Part 114. See 11 CFR 100.7(a)(1)(i)(D), 11 CFR 102.5(b)(1)(ii) and the discussion on question (a).

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)

Max L. Friedersdorf
Chairman for the
Federal Election Commission