



FEDERAL ELECTION COMMISSION
Washington, DC 20463

CONCURRING OPINION IN ADVISORY OPINION 1980-30

of

COMMISSIONER FRANK P. REICHE

While I agree with the result, I am constrained to file a concurring opinion in view of the potential impact of this advisory opinion on fundraising in future campaigns and its apparent approval of the practice of converting funds donated for use in a particular campaign to use in some other campaign in another election cycle. Specifically, I refer to the Commission's approval of Mr. Askin's determination, subsequent to his decision to terminate his 1980 primary campaign for Congress as of March 10, 1980, that funds raised by him in conjunction with such primary campaign constitute "excess campaign funds" and therefore may be used in his 1982 campaign--should he, in fact, run for Federal office at that time. Although I do not believe that the circumstances in this particular case indicate an abuse on the part of Mr. Askin, I also do not believe that the Commission can or should dismiss as a factor to be considered the intent of the donor in making a contribution to a candidate for Federal office. In most cases, contributions are solicited for use in a particular campaign for a particular office. The Commission's opinion adopts the approach that once given, the endorsement of a candidate inherent in the making of a contribution continues ad infinitum. Implicit in this view is a determination that it matters not when a contribution is ultimately used, nor the office then sought by the original recipient of the contribution, nor the identity of the opposition at that time. I am particularly concerned by the unilateral decision of a candidate to convert funds raised by him for a specific campaign which was scarcely launched (only \$6,000 having been expended therefor) to use in a future campaign when the contributors, if they were given the opportunity to contribute in 1981 and 1982, might well choose to support some other candidate. If Mr. Askin had waged an extensive 1980 primary campaign and had, following such campaign, excess campaign funds remaining, then the transfer of such excess funds to his projected 1982 campaign would be among those purposes which are deemed "lawful" under the statute. Here, no substantial 1980 primary campaign was mounted by Mr. Askin; hence, a significant portion of the funds raised by him for 1980 primary were never used for the purpose intended by the contributors. Furthermore, what if the subsequent campaign in which Mr. Askin proposed to use these excess campaign funds was in 1984 or 1986, as contrasted with 1982. Would the Commission sanction such transfers under these circumstances? Is there any limit to the period during which excess campaign funds of this type may be used for future

campaigns? I do not believe that the parameters of this question have been addressed by the Commission. It is my opinion that they should have been noted in the Advisory Opinion and it is for this reason that I file a concurring opinion.