



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 30, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-30

Sue Ann Dillport
Treasurer
Frank Askin for Congress Committee
584 Prospect Street
Maplewood, New Jersey 07040

Dear Ms. Dillport:

This responds to your letter dated March 22, 1980, supplemented by your letters dated April 7 and April 15, 1980, in which you request an advisory opinion on behalf of the Frank Askin for Congress Committee ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to various proposed uses of campaign funds and the reporting thereof by the Committee. Your opinion request sets forth the following facts.

The Frank Askin for Congress Committee was designated as the principal campaign committee for Frank Askin (the "candidate"), a candidate for the House of Representatives from the 11th Congressional District of New Jersey in the latter part of 1979. At the time of the designation, the candidate had decided to seek the Democratic Party nomination in the 1980 primary election. Recently, however, the candidate decided to seek the Democratic party nomination for the House of Representatives in 1982, rather than 1980. At the time of the candidate's change in plans, approximately \$11,500 had been raised for his candidacy in 1980 and approximately \$6,000 had been expended in the campaign.

When the change in status occurred, the Committee contacted the Federal Election Commission staff for advice on how to proceed and was referred to Advisory Opinion 1977-24, among others. Pursuant to the alternative procedures set forth in AO 1977-24, the Committee, rather than terminating and transferring the residual funds to a new 1982 committee, elected to file an amended Statement of organization, redesignating the 1980 committee as the principal campaign committee for the candidate's 1982 election campaign.

Your request proceeds on the assumption that the approximately \$5,500 remaining at the time of the decision not to seek the 1980 nomination constitute "excess campaign funds" within the meaning of 11 CFR 113.1(e). Under the new regulations promulgated pursuant to the 1980 amendments to the Federal Election Campaign Act (the "Act"), 11 CFR 113.1(e) provides:

"Excess campaign funds" means amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures.

Assuming that no debts or obligations incurred in the course of the candidate's terminated 1980 primary campaign remain outstanding, the approximately \$5,500 remaining on March 10, 1980, the date the Committee filed the amended Statement of Organization, constitute "excess campaign funds" within the meaning of the Act.

The Committee first asks whether the Act permits using the excess campaign funds for the following purposes: (a) to refund a pro rata portion of the excess funds to those contributors who request refunds; and (b) to use the remaining excess funds to support the candidate's nomination in the 1982 primary election through publication of a periodic newsletter discussing issues of concern to the electorate of the 11th Congressional District and to finance fundraising efforts consistent with the Act.

With respect to (a) regarding refunds to contributors, 11 CFR 113.2 provides that excess campaign funds "may be used for any... lawful purpose," except that in the situation presented here, no such amounts may be converted by any person to any personal use. See also 2 U.S.C. 439a. The Commission concludes that while the Act neither requires that excess campaign funds be refunded nor prescribes procedures for making such refunds, the use of such excess funds for making pro rata refunds to contributors requesting a refund constitutes a "lawful purpose" under the Act. However, such refunds must be reported as disbursements pursuant to 11 CFR 104.3(b)(2)(v)(A) and (B). With respect to (b) regarding the use of the remaining excess funds to support the candidate's nomination in the 1982 primary election, 110.3(a)(2)(iv) of the regulations provides that surplus funds from a prior campaign committee may be transferred to a current campaign committee of the same individual. Thus, such a use of the excess funds by the committee would constitute a "lawful purpose" under 439a of the Act. See also Advisory opinion 1977-24.

Your second question asks whether, since the candidate has withdrawn from the 1980 elections, the Committee may treat contributions received prior to the 1980 general election, which are not designated for use in the 1982 election, as contributions for the 1982 primary election. The Act provides at 2 U.S.C. 441a(a)(1) that no person shall make contributions to any candidate and his authorized political committees which exceed \$1,000 per election. Section 110.1(a)(2)(ii)(A) of the regulations defines "with respect to any election", in the case, of a contribution not designated in writing for a particular election, as for a primary election if made on or before the date of the primary election. On March 10, 1980, the Committee amended its Statement of Organization to refer to the 1982 election and the candidate has filed a new FEC Form 2. By virtue of these acts, Mr. Askin ceased to be a candidate for the 1980 elections and became a candidate for the 1982 election. Thus, any undesigned contributions received

between March 10, 1980 and the date of the 1982 primary election constitute contributions to the 1982 primary campaign.

Your third question asks whether contributions received by the Committee after the candidate terminated his status as a candidate in the 1980 elections from persons who previously contributed to the 1980 campaign (a) would be subject to a new \$1,000 per person limit, and (b) would be reportable in itemized form only when the amounts received from such persons for the 1982 campaign exceed \$200.

With respect to (a) concerning the \$1,000 contribution limitation, 110.1 of the regulations prohibits any person from making contributions with respect to any election to Federal office which exceed \$1,000 and 110.3(a)(2)(iv) permits the transfer of surplus funds from a prior committee to a current committee of the same individual. As Mr. Askin ceased to be a candidate for the 1980 elections on March 10, 1980, contributions made prior to that date may be carried over to his 1982 campaign committee without application of the 1982 contribution limitations to each contribution comprising the surplus, provided that any contribution so carried over was made solely for the purpose of influencing the 1980 election. Contributions made after March 10, 1980 would be charged against the contribution limits of the contributor with respect to the 1982 primary or general election. (See Advisory Opinions 1977-24, 1978-37, copies enclosed).

Subpart (b) concerning the itemized reporting of such contributions is discussed below in response to your fourth question.

Your fourth question asks whether, assuming that the 1980 principal campaign committee need not be terminated, the Committee's next reporting obligation is the semi-annual report due no later than July 31, 1980. The Committee has correctly assumed that the 1980 committee need not be terminated and has amended its Statement of Organization to redesignate it as the 1982 campaign committee; also, the candidate filed an amended FEC Form 2. See Advisory Opinion 1977-24.

Regarding the reporting obligations, because Mr. Askin has ceased to be a candidate for the 1980 elections, the provisions of 11 CFR 104.5(a)(1)(iii)(A) and (B), requiring principal campaign committees of congressional candidates to file quarterly reports during an election year, no longer apply. Thus, the Committee is now subject to the provisions of 11 CFR 104.5(a)(2)(i)(A) and (B), which require principal campaign committees to file semi-annual reports during a non-election year. In the case of this Committee, the next report is due no later than July 31, 1980 and will cover the period from January 1 - June 30, 1980.

With respect to part (b) of your third question, above, 11 CFR 104.3(a)(4)(i) requires the identification of each person "... who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions aggregate in excess of \$200 per calendar year...." Here, the Committee was not terminated but rather redesignated and now must file a semi-annual report covering the period January 1 - June 30, 1980. Thus, 104.3(a)(4)(i) requires the identification of each person contributing in excess of \$200 between January 1 and June 30, 1980 regardless of whether the contributions are regarded as made for the 1980 or the 1982

election. An appropriate notation of 1980 or 1982 should be made for each itemized contribution listed on Schedule A to assure that the relevant contribution limit is followed.

Your fifth question asks the following: If the candidate also seeks designation as a presidential candidate's delegate to the Democratic National Convention in 1980 and encourages registered Democrats to support his selection in a newsletter financed by the Committee, the principal purpose of which is to support the candidate's 1982 election, whether (a) any resulting reference to a Presidential candidate in the newsletter constitutes a contribution to the presidential candidate; (b) such a contribution is permissible; and (c) the cost of the newsletter should be allocated between the candidate and the presidential candidate.

The Commission notes that in your letter supplementing your request you have provided a copy of the newsletter in question. The newsletter is four pages in length (one-sided). Approximately 2/3 of the last page of the newsletter is devoted to a discussion of Mr. Askin's candidacy for designation as a delegate to the Democratic National Convention committed to Senator Edward Kennedy. No picture of Senator Kennedy appears in the newsletter.

You have stated that Mr. Askin decided to include a reference to Senator Kennedy in the newsletter without consultation with the candidate or any of his authorized committees or agents. They were not shown a copy of the newsletter while it was being prepared nor have they expressed any approval or disapproval of the decision to include a reference to Senator Kennedy. The absence of consultation means that any Committee expenditures for the newsletter that might otherwise be allocable in part to Senator Kennedy's presidential candidacy are not contributions in kind to him and corresponding expenditures chargeable to his limit under 2 U.S.C. 441a(b). The Act and regulations would require attribution of the newsletter expenditures to Senator Kennedy's expenditure limit only if the Committee expenditure was made pursuant to a request by Senator Kennedy, one of his authorized presidential campaign committees, or one of his (or the committee's) agents. 11 CFR 110.8(g), see 2 U.S.C. 441a(b)(2)(B); compare 2 U.S.C. 441a(a)(7)(B)(i) and Advisory Opinion 1980-28, copy enclosed.

The circumstances presented do not indicate that a contribution in kind is being made to Senator Kennedy's presidential campaign for purposes of the limits in 2 U.S.C. 441a. All payments by the Committee for the newsletter are in any event subject to reporting under 2 U.S.C. 434 and Part 104 of Commission regulations. Therefore, it is not necessary to address the question of whether Commission regulations at 11 CFR 106.1 require the newsletter expenses to be allocated to Senator Kennedy or to the candidate's 1982 congressional campaign or to his effort to be designated by the April 13 caucus as a delegate.

Finally, your sixth question asks whether the Committee's Statement of Organization and the candidate's FEC Form 2 may be amended in the future if redistricting, which is required before the 1982 election, results in a redesignation of the congressional district. Section 102.2 of the regulations requires that any change or correction in the information previously filed in the Statement of organization shall be reported no later than 10 days following the date of the change or correction by filing an amended Statement of Organization or by filing a letter noting the change(s). Accordingly, the Statement of Organization (FEC Form 1) must be amended to reflect any redesignation of congressional district that may result from redistricting.

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)

Robert O. Tiernan
Chairman for the
Federal Election Commission

Enclosures