



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 21, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-32

Fred L. Gibson
Treasurer
Dannemeyer for Congress Committee
P.O. Box 4344
Fullerton, California 92631

Dear Mr. Gibson:

This responds to your letter dated March 21, 1980, in which you request an advisory opinion on behalf of the Dannemeyer for Congress Committee regarding application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the retirement of debts from Mr. Dannemeyer's prior campaigns for State and Federal office.

Commission records indicate that the Dannemeyer for Congress Committee, hereinafter "the Committee", is the principal campaign committee of William E. Dannemeyer, a Member of Congress representing the 39th Congressional District of California. Your request states that in November of 1976 Mr. Dannemeyer was elected as State Assemblyman in the State of California and further that a debt of \$6,500 is still owed in connection with that campaign. In November 1978, Mr. Dannemeyer was elected to the House of Representatives and at this time, a deficit of \$2,750 still remains from that campaign for Federal office.

Your letter states that several fundraisers were held by the Committee in 1979 and, as a result of these fundraisers "an amount now exists in the campaign treasury which is in excess of any amount necessary to defray expenditures for the upcoming primary election for the 97th Congress." Mr. Dannemeyer is a candidate for the 1980 Congressional election. You state that "solicitations to the fundraisers held in 1979 were not specific as to the purpose for which the funds were solicited."

You ask for Commission response to the following questions:

1. Is it permissible for the Committee to transfer funds raised through the described fundraisers in 1979 to the Dannemeyer for Assembly account in the amount of \$6,500 to pay the remaining debt from the 1976 Dannemeyer for Assembly campaign?

2. Is it permissible for the Committee to use such funds to pay the deficit of \$2,750 which was incurred in the Dannemeyer for Congress campaign of 1978?

In response to your first question, the Commission concludes that the Committee may transfer funds to the Dannemeyer for Assembly account for the purpose of paying the deficit from Mr. Dannemeyer's campaign for State Assembly. The Act and Commission regulations provide that excess campaign funds may be used for a variety of specified purposes and may also be used for "any other lawful purpose." * Thus, assuming that State law does not make such a payment unlawful, the payment of an outstanding debt from the campaign for State office would be considered a "lawful purpose" under the Act. 2 U.S.C. 439a; 11 CFR 113.2. See also Advisory Opinion 1977-48, copy enclosed.

With regard to your second question, the Commission concludes that the campaign funds derived from the Committee's 1979 fundraisers may be used to pay the remaining debt of \$2,750 from Mr. Dannemeyer's 1978 campaign for Federal office. This conclusion is based on the fact that Mr. Dannemeyer was a candidate for the 1980 congressional election at the time the fundraisers were held in 1979. Commission records indicate that although Mr. Dannemeyer has not filed FEC Form 2 formalizing his candidate status for the 1980 congressional election, the Committee has been engaged since July, 1979 in financial activity on behalf of Mr. Dannemeyer's 1980 campaign for Federal office. Given Mr. Dannemeyer's candidate status with respect to the 1980 congressional election, the funds raised at the 1979 fundraisers are treated as contributions to his 1980 congressional campaign and not as contributions with respect to the 1978 congressional campaign. 11 CFR 110.1(a)(2); see Advisory Opinion 1978-37, copy enclosed.

The Commission has consistently recognized that under the Act and regulations congressional candidates and their principal campaign committees have considerable discretion as to the expenditures made from campaign funds. See Advisory Opinions 1978-5, 1977-1, 1976-116, 1976-64. Accordingly, the use of contributions, made with respect to the 1980 primary election, to retire an outstanding obligation of the 1978 campaign is permissible.

The Commission expresses no opinion as to possible application of the House rules to the described transaction since that issue is outside the Commission's jurisdiction.

* The excess funds may not, however, be converted by any person to any personal use if the candidate was not a member of Congress on January 8, 1980. Since Mr. Dannemeyer was a Member of Congress on that date, the prohibition on conversion of excess campaign funds to personal use is not applicable.

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