



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 15, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-97

Mr. T. Timothy Ryan, Jr.
Pierson, Ball & Dowd
1000 Ring Building
1200 18th Street, N.W.
Washington, D.C. 20006

Dear Mr. Ryan:

This responds to your letter of August 15, 1980 requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the utilization of individual donations for pre-election transition activities.

Your letter states the Presidential Transition Trust ("the Trust") has been established separate and apart from the Reagan-Bush Committee ("the Committee") to undertake certain transition activities which are necessary before¹ the November 4, 1980 general election. The purposes of the Trust, as set forth in the Trust document, are:

To receive donations from individuals (no donations will be accepted from corporations, national banks, or labor organizations);

To pay expenses incurred in gathering information about the critical jobs in a possible new administration and the identification of personnel who

¹ You have noted that the funding of presidential transition activity is specifically addressed only by the Presidential Transition Act of 1963. The Transition Act authorizes the Administrator of General Services to provide office space and equipment needed by the president-elect in preparation for the assumption of his official duties. The Transition Act also provides a mechanism for the appointment and compensation of transition personnel as well as paying the costs of printing, postage, and other expenses. The Transition Act, however, clearly prohibits the GSA Administrator from expending funds for transition purposes incurred before the day following the date of the general election or after the inauguration of the President.

would be qualified to fill those jobs, including computer work, record keeping, clerical activities and similar efforts associated with this personnel function;

To pay expenses incurred in liaison activities with the United States General Services Administration in preparation for any Presidential Transition after the 1980 election; and

To provide accountings to the general public on a periodic basis which conform with the reporting requirements established by the Commission' for principal campaign committees of a presidential candidate.

You state that the Trust would limit the amount of individual donations to \$5,000 per person. Moreover, certain conditions for the solicitation of individual donations to the Trust have been established. Those conditions are:

Personal donations will be solicited by the Trust either in person or by mail;

All solicitations by the Trust will be accompanied or immediately followed by a letter stating the purpose of the solicitation. The statement of purpose made during any solicitation will be as follows: "The purpose of this solicitation is to obtain personal funds for the Presidential Transition Trust. Funds obtained by this solicitation will not be used for the purpose of influencing any election. Nor will they be used in any way to promote or maintain the official activities of an office holder";

Each contributor will be requested to sign a card to be returned with the donation affirming the purpose of the gift. This card will state: "I, the undersigned, hereby confirm the donation of this \$_____ given to the Presidential Transition Trust for the purpose of funding pre-election transition activity. This donation is not given for the purpose of influencing any election or as a campaign contribution or for the purpose of promoting or maintaining the official activities of an office holder";

Disbursements from the Trust will be utilized solely for the costs of the solicitation effort or to fund transition activities.

Under these circumstances, you ask whether pre-election transition activities, such as personnel related functions and pre-election coordination with the GSA, may be funded through privately raised individual donations to the Trust.

Under the Act the term "contribution" means any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing an election for Federal office. 2 U.S.C. 431(8)(A)(i) and 11 CFR 100.7(a)(1). The term "political committee" is defined as any committee, club, association, or other group of persons which

receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year. 2 U.S.C. 431(4)(A) and 11 CFR 100.5(a).

In a somewhat analogous situation, the Commission has previously considered whether it was permissible under the Act for a Federal officeholder to establish a legal defense fund trust. See Advisory Opinion 1979-37, copy enclosed. In that opinion, the Commission concluded that establishment of such a legal defense fund was not subject to the Act and that donations to the trust would not be considered "contributions" under the Act. The Commission focused on the specific terms of the trust and reasoned that donations to and disbursements from the trust were exclusively connected with, and strictly for the purpose of, paying the costs of the officeholder's legal defense.² See also Advisory Opinions 1980-4 and 1977-7 (copies enclosed) which presented specific situations involving activity with possible political aspects but held that the purpose of influencing an election was not foremost.

Under the facts presented here funds donated to the Trust and disbursements from the Trust will be made for the purpose of paying expenses incurred in gathering information about the critical jobs in a possible new administration and to identify personnel who would be qualified to fill those jobs. Moreover, donors to the Trust will be advised that any funds donated will not be used for the purpose of influencing an election and will be asked to sign a card affirming that the purpose of the gift is to fund such pre-election transition activity. Donations will not be accepted from corporations, national banks or labor organizations; and the Trust will be established and operated separate from any campaign organization. Because donations to the Trust and disbursements from it will not be made for the purpose of influencing a Federal election, the Commission concludes that such donations and disbursements would not be considered "contributions" or "expenditures" under the Act. Nor would the establishment and operation of the Trust under the described circumstances give rise to "political committee" status for the Trust. Accordingly, the Commission concludes that nothing in the Act or Commission regulations would prohibit the Trust from being established and operated in the manner described in your request.

In reaching this conclusion, the Commission assumes that the Trust will operate in a manner completely separate and independent of the Committee and that no coordination or consultation will occur between personnel of the Trust and the Committee with respect to carrying out the functions of the Trust in a manner that would assist the Committee in its election campaign activity. Moreover, the Commission further assumes that the Trust's only function will be to gather information of the type described in the request, and that trust assets will not in any way be used to further the election of Governor Reagan.

The Commission expresses no opinion as to the possible application of other Federal statutes, specifically the provisions of the Presidential Transition Act of 1963, since those issues are outside its jurisdiction.

² However, compare facts and conclusions in Advisory Opinion 1980-57 (copy enclosed) where the Commission held that funds raised to prosecute a civil action against a potential general election opponent seeking to deny him ballot access, constituted contributions and expenditures made "for the purpose of influencing an election."

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

Sincerely yours,

(signed)

Max L. Friedersdorf
Chairman for the
Federal Election Commission

Enclosures (AOs 1977-7, 1979-37, 1980-4, 1980-57)