



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 20, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-1

Mr. David Packard
1501 Page Mill Road
Palo Alto, California 94304

Dear Mr. Packard:

This responds to your letter of December 22, 1980, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the disposition of excess campaign funds.

You state that you were the Chairman of the Bay Area Committee for the Reelection of the President ("Bay Area Committee"), a committee formed in 1972 for the purpose of supporting the reelection of President Richard Nixon. The Bay Area Committee had several subsidiary county committees, including the San Mateo County Committee for the Reelection of the President ("San Mateo Committee"). According to your letter, the Bay Area Committee and each of its subsidiary county committees were registered and filed periodic campaign disclosure reports under the Federal laws then applicable. You state that at the close of the 1972 presidential election campaign, each county committee paid its expenses and forwarded any surplus in its account to the Bay Area Committee. The Bay Area Committee paid all remaining expenses and, by mid-1973, concluded all activity.

Your letter states that under California law, when a bank account remains inactive for seven years, and the bank is unable to locate the party responsible for the account, any remaining funds escheat to the State. Recently, you were informed by Wells Fargo Bank that there was a balance remaining in the Bay Area Committee's account of \$257.59. You have also been informed by Crocker National Bank that there was a balance of \$2,534.54 remaining in the San Mateo Committee's account. You add that these funds will escheat to the State if the banks holding these funds are not otherwise directed.

Having now been made aware of the existence of these funds, you propose to request the bank to transfer them to the San Mateo County Republican Central Committee ("Republican Central Committee")¹, which will disclose their receipt in campaign statements filed pursuant to the Act and applicable State law. You ask whether the existence of these funds or your proposed disposition of them would create additional reporting obligations for the Bay Area Committee or the San Mateo Committee.

Under the Act and Commission regulations, excess campaign funds may be used for certain specific purposes such as for donations to any organization described in 26 U.S.C. 501(c), or may be used for "any other lawful purpose,"² including transfers without limitation to any national, State, or local committee of any political party." 2 U.S.C. 439a and 11 CFR 113.2. Thus, because the Act permits excess campaign funds to be transferred without limitation to any national, State, or local committee of a political party, the Commission concludes that your proposed transfer of excess campaign funds of the Bay Area Committee and the San Mateo Committee to the Republican Central Committee is permissible under the Act.

You have asked whether the Bay Area Committee or the San Mateo Committee are required to file additional reports with the Commission as a result of these transactions. This raises the issue of whether the transfer of funds is a "contribution" or "expenditure" under the Act and whether, by the making of such a "contribution" or "expenditure", the Bay Area Committee or the San Mateo Committee becomes a "political committee" for purposes of the Act's reporting requirements.

The Act defines the term "political committee" as any committee, club, association, or other group of persons which receives contributions or 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). 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 any election for Federal office." 2 U.S.C. 431(8)(A)(i) and 11 CFR 100.7(a)(1). The term "expenditure" is defined in a similar manner and includes "any purchase, payment, distribution... or gift of money" made for the purpose of influencing a Federal election. 2 U.S.C. 431(9)(A). None of the exceptions to the definition of "contribution" or "expenditure" includes the transfer of excess campaign funds. Compare 2 U.S.C. 431(8)(B), and 431(9)(B). Thus, the transfer of excess campaign funds by a "committee," such as the Bay Area or the San Mateo Committees, to another committee, such as the Republican Central Committee, for use in a Federal election would constitute an "expenditure" made by the transferor committee and a "contribution" received by the transferee committee.

The Commission concludes that while the transfer of \$257.59 by the Bay Area Committee to the Republican Central Committee is a "contribution to the Republican Central

¹ Reports filed with the Commission by the Republican Central Committee indicate that the Committee maintains a Federal account for use in campaigns for Federal office. See 11 CFR 102.5.

² While the Act permits use of excess campaign funds for "any lawful purpose," with respect to any candidate or individual who was not a member of Congress on January 8, 1980, no personal use of the excess campaign funds may be made by that individual or any other person. 2 U.S.C. 439a and see Advisory Opinion 1980-113, copy enclosed.

Committee if it is deposited into the Federal account, such a contribution does not make the Bay Area Committee a "political committee" since it does not exceed \$1,000. Accordingly, there would be no additional registration or reporting obligations for the Bay Area Committee as a result of this transaction. However, if the funds are placed in the Federal account of the Republican Central Committee it would be reportable by that Committee as a contribution. 11 CFR 104.3(a)(4).

On the other hand, the San Mateo Committee would be a "political committee" under the Act if that committee makes a contribution in excess of \$1,000 to the Federal account of the Republican Central Committee. (If the \$2,534 excess were contributed for nonfederal election purposes and placed in a nonfederal election account of the Republican Central Committee, then the San Mateo Committee would not become a "political committee" under the Act.) As a "political committee," the San Mateo Committee must file a statement of organization pursuant to Part 102 of the Commission's regulations. It should also file a report (which may also be its termination report) disclosing the existence of its cash-on-hand and its disposal by contribution to the Republican Central Committee. Because Commission regulations require that records relating to contributions only be kept for three years, the Treasurer of the San Mateo Committee need only make his or her best efforts to disclose the source of the cash-on-hand balance. See 11 CFR 102.9(c), and (d).

The Commission emphasizes that if the San Meteo Committee transfers \$1,000 or less to the Republican Central Committee for use in Federal elections, or if it contributes the money to a charitable organization (under 26 U.S.C. 501(c)), the San Mateo Committee would not be a "political committee" under the Act and thus would not have any additional reporting obligations to the Commission.

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)

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosure (AO 1980-113)