



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 16, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-8

Mr. Victor T. Adamo, Treasurer
O'Reilly for Congress Committee
207 W. Jefferson
Ann Arbor, Michigan 48103

Dear Mr. Adamo:

This responds to your letter of January 30, 1981, requesting an advisory opinion on behalf of the O'Reilly for Congress Committee ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to payment of the Committee's debts by funds secured through a loan by the candidate.

You explain that the Committee has incurred debts which it is endeavoring to pay. The source of the funds to be used to pay those debts is the candidate, Kathleen O'Reilly. She plans to raise approximately \$20,000 by entering into a loan secured by a second mortgage on her personal residence. This loan will be made in the usual course of business by a financial institution which you state falls within Commission regulations at 11 CFR 100.7(b)(11)* as an exemption from the definition of contribution.

However, you go on to explain that since Ms. O'Reilly is not currently employed, the financial institution will require a third party to be a co-signer on the second mortgage note. This

* 11 CFR 100.7(b)(11) reads in part, as follows:

A loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it: bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written instrument; and is subject to a due date or amortization schedule. Such loans shall be reported by the political committee in accordance with 11 CFR 104.3(a). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement.

is the only basis on which the loan can be made under the regulations governing the financial institution.

The specific question raised is whether the existence of the co-signer results in a contribution by the co-signer to the extent of the note, in this case \$20,000, thus prohibiting the Committee from accepting the loan proceeds.

The Commission is of the opinion that the co-signer would be a contributor and thus would be limited to signing on a loan of up to \$1,000, assuming that person has not as yet used any of his or her contribution limit to the Committee.

Under 2 U.S.C. 432(e)(2) any candidate who receives a contribution or any loan for use in connection with that candidate's campaign shall be considered, for purposes of the Act, as having received the contribution or loan as an agent of the authorized committee of the candidate. See also 11 CFR 101.2(a) which reiterates that a candidate who receives a contribution as defined at 11 CFR 100.7 or obtains any loan in connection with his or her campaign does so as an agent of his or her authorized committee. This loan is clearly being entered into to settle the Committee's debts. Thus, for purposes of the Act Ms. O'Reilly would be receiving this loan as an agent of the Committee.

The request indicates that the proposed \$20,000 loan which Ms. O'Reilly plans to obtain is a second mortgage on her residence made in the ordinary course of business by a financial institution described in 11 CFR 100.7(b)(11). In light of that fact, the loan would not constitute a contribution by the lending institution to the Committee. Moreover, Ms. O'Reilly by herself could guarantee the loan since a candidate may make unlimited contributions and expenditures from personal funds on behalf of his or her campaign. 11 CFR 110-10.

However, under 11 CFR 100.7(a)(1)(i) a contribution is defined to include "a guarantee, endorsement and any other form of security." The co-signer's name on the note in the proposed arrangement, which is a requirement by the lending institution, is a form of security and as such would fall within the definition of contribution. In light of 11 CFR 100.7(b)(11) the co-signer would be considered to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in the written agreement, in this instance \$20,000.

As a contributor the co-signer would be subject to the limits set forth in 2 U.S.C. 441a. Since the proposed loan is \$20,000, one individual, other than Ms. O'Reilly, could not guarantee

that amount. Rather, at least 20 individuals who have not contributed to the Committee for this election would be necessary.

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)

John Warren McGarry
Chairman for the
Federal Election Commission