



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 16, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-13

Mr. D. Miles Holman
Jones, Waldo, Holbrook & McDonough
800 Walker Bank Building
Salt Lake City, Utah 84111

Dear Mr. Holman:

This responds to your letter of February 11, 1981, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the establishment of a legal defense fund.

Your letter states that Frank E. Moss was a United States Senator from the State of Utah for 18 years until he was defeated in the 1976 general election. During the period just preceding the 1976 general election, then Senator Moss made a comment at a press conference concerning a former campaign aide of his opposing candidate. In August 1977, this campaign aide filed a lawsuit against Mr. Moss claiming that Mr. Moss had slandered him. Later in 1977, Mr. Moss began to incur legal fees in his defense of the action which had been brought against him.

You state that Mr. Moss and friends of his have planned to organize a fund raising activity whereby individuals and corporations may be asked to donate to a fund which would be used to offset the legal fees incurred by Mr. Moss in defense of the foregoing legal action. You add that Mr. Moss has not been a candidate for any office since leaving the United States Senate in January, 1977. You ask whether any contribution given by any individual or corporation to Mr. Moss's legal defense fund would be a "contribution or expenditure for the purpose of influencing any election for Federal office" or would in any way be subject to the limitations or prohibitions of the Act.

Under the Act, a "contribution" means a gift, subscription, loan, advance, or deposit of money, or anything of value made for the purpose of influencing the nomination or election of any person to Federal office. 2 U.S.C. 431(8). Similarly, the term "expenditure" is defined in an

identical fashion as relating to payments made for the purpose of influencing a person's nomination or election to Federal office. 2 U.S.C. 431(9).

The Commission is of the opinion that the situation presented here is indistinguishable from previous advisory opinions which considered the question of funds raised for legal defense purposes. In Advisory Opinions 1980-4 and 1979-37 (see copies enclosed), the Commission concluded that because donations and disbursements for the purpose of defending oneself in a lawsuit were not "contributions" or "expenditures," nothing in the Act or Commission regulations would prohibit or limit the receipt of those donations. Accordingly, the Commission concludes that because the fundraising activity for Mr. Moss is exclusively connected with, and strictly for the purpose of, paying the costs of his legal defense, such activity is outside the purview of the Act, and nothing in the Act or the Commission's regulations would limit or prohibit the fund from receiving donations from those sources you have described in your letter. Nor would Mr. Moss or the defense fund be required to register or file disclosure reports under the Act or Commission regulations.

The Commission expresses no opinion as to any Federal income tax ramifications or the applicability of any other Federal law, since those issues (if any) are not within its jurisdiction.

This response constitutes an advisory opinion concerning the 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

Enclosures