



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

March 26, 1981

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-15

Joseph F. McBride  
Attorney at Law  
Maryland Federal Savings & Loan Building  
9200 Edmonston Road, Suite 300  
Greenbelt, Maryland 20770

Dear Mr. McBride:

This responds to your letters of March 3 and 6, 1981, requesting an advisory opinion on behalf of the Friends of Reuben Spellman \* ("Friends") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use of excess campaign funds held by the principal campaign committee of Gladys Spellman, the Citizens for Spellman Committee ("Citizens").

Your letter states that Citizens was the principal campaign committee of Gladys N. Spellman who was a Member of the United States House of Representatives from the 5th Congressional District of Maryland. You state that approximately \$35,000 in excess campaign funds remains in the account of Citizens from the 1980 general election campaign. You add that Mrs. Spellman was stricken with a heart arrest on October 30, 1980 and has remained incapacitated since then. On February 24, 1981 the House of Representatives declared her seat vacant, and subsequently Governor Hughes of Maryland announced that a special primary election would be held on April 7, 1981, with a general election on May 19, 1981. You note that Mr. Reuben Spellman, the husband of Gladys Spellman, has announced his candidacy for the Maryland 5th District seat.

With respect to the excess funds which remain from Gladys Spellman's 1980 general election campaign, you ask:

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\* According to your Statement of Organization (filed with the Commission on February 27, 1981), the Friends of Reuben Spellman is the principal campaign committee for Reuben Spellman who is a candidate for the Democratic nomination for the office of Representative from Maryland's 5th Congressional District.

1. May the funds be given, transferred or loaned to the Friends committee?
2. May the funds be distributed to Reuben Spellman as the spouse of Gladys Spellman?
3. May the funds be distributed to Gladys Spellman's staff?
4. Who has the authority to make the decision as to the disposition of the funds?

Under the Act, excess campaign funds may be used by a candidate or individual for various specific purposes and may also be used for "any other lawful purpose," including transfer without limitation to any national, State, or local committee of any political party. 2 U.S.C. 439a and 11 CFR 113. Moreover, because Mrs. Spellman was a Member of Congress on January 8, 1980, "any other lawful purpose" would include, for purposes of 439a a "personal use" of the funds by Mrs. Spellman or any other person. See 2 U.S.C. 439a and compare Advisory Opinions 1981-2 and 1980-113, copies enclosed. Thus, with respect to questions 1 and 3 of your request, the Commission concludes that Citizens may contribute excess campaign funds to the Friends or may distribute those funds to Mrs. Spellman's staff. Any contribution (including a loan or transfer) from Citizens to the Friends is subject to the \$1,000 per election limit set forth in 2 U.S.C. 441a(a)(1)(A) on contributions from a "person" to a principal campaign committee. See 2 U.S.C. 431(11) and 11 CFR 100.10; also see the definition of contribution at 2 U.S.C. 431(8) and 11 CFR 100.7(a).

With respect to question 2, the Commission observes initially that Citizens may transfer excess campaign funds to Gladys Spellman since such a disposition of the funds would be a "personal use" of the excess funds by Mrs. Spellman. She, or another person acting on her behalf in accordance with State law, would not be prohibited by 439a from making the funds available to Reuben Spellman. However, if the funds were given to Mr. Spellman who then wished to use them to influence his election to Federal office, the issue arises as to whether they would be his "personal funds" under 11 CFR 110.10, or whether they are a contribution to his campaign by Mrs. Spellman.

That regulation provides (with two exceptions not relevant here) that a candidate for Federal office may make unlimited expenditures from "personal funds." The term "personal funds" is defined by 11 CFR 110.10(b) to mean:

- (1) Any assets to which at the time he or she became a candidate the candidate had legal and rightful title, or with respect to which the candidate had the right of beneficial enjoyment, under applicable State law, and which the candidate had legal right of access to or control over, including funds from immediate family members; and
- (2) Salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stock or other investments; bequests to the candidate; income from trusts established before candidacy; income from

trusts established by bequest after candidacy of which the candidate is the beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance.

Since the origin of the funds is Gladys Spellman's former principal campaign committee, it is apparent that 110.10(b)(2) would not apply. Under 110.10(b)(1) the funds donated by (or on behalf of) Mrs. Spellman to Mr. Spellman would be "personal funds" of Mr. Spellman only if he had "legal and rightful title" to them at the time he became a candidate, or if he had both "the right of beneficial enjoyment, under applicable State law, and... legal right of access to or control over" the funds at the time he became a candidate.

The cited regulation concerning a candidate's making expenditures for his/her own campaign from his/her "personal funds" is intended to be consistent with that portion of the Supreme Court's opinion in Buckley v. Valeo, 424 U.S. 1 (1976), concerning what funds are personal funds of a candidate (not subject to contribution limits) and what funds are those of immediate family members (which are subject to contribution limits). See Explanation and Justification of Commission Regulations, House Doc. No. 95-44; 95th Cong., 1st Sess.; January 12, 1977; p.70-71. Also see Buckley, Id., at 51-52 and footnotes 57 and 59.

Finally, in question 4, you have asked who has the authority to make the decision as to the disposition of the excess funds. Commission regulations provide that no expenditure shall be made for or on behalf of a political committee without the authorization of its treasurer. 11 CFR 102.7(c). Also, a candidate is required to designate a principal campaign committee which, in turn, is required to have a treasurer. See 2 U.S.C. 432(a) and (e); also see 11 CFR 101.1 and 102.7. Beyond these requirements, the Act and Commission regulations are silent on the question of delegating or establishing decision making authority within a principal campaign committee. Thus the Act and Commission regulations leave to the candidate or committee personnel, or both, the responsibility to establish the lines of authority for committee decision making.

The Commission expresses no opinion as to the possible application of House rules to the described activity, nor as to any tax ramifications, since those issues are outside its jurisdiction.

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

Enclosures (AO 1981-2 and AAO 1980-113)