



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 29, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-22

John M. Cogswell
Cogswell and Wehrle
1660 Lincoln Street, Suite 1910
Denver, Colorado 80264

Dear Mr. Cogswell:

This responds to your letter of April 27, 1981, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to contributions made to retire primary election debts.

From your request it appears that the Cogswell for Senate Committee (Senate Committee) has debts outstanding from the primary election and to pay these you would like to collect amounts greater than \$1,000 from corporations. You then explain that you have formed the Cogswell for Citizen Committee (Citizen Committee), the sole purpose of which is "to collect contributions from individuals, corporations, labor unions and anybody else in unlimited amounts for the sole purpose of paying interest on campaign debts." This committee, you feel, is not a political committee under the Act.

Although in your request you present two questions, first whether you may collect amounts greater than \$1,000 from corporations and second whether Citizen Committee is a political committee for purposes of the Act, the central issue raised by your request is whether monies collected to retire primary election debts are "contributions" under the Act and as such subject to all the limitations and prohibitions regarding contributions set forth in the Act.

Commission regulations at 110.1(g)(2) state "contributions made to retire debts resulting from elections held after December 31, 1974 are subject to the limitations of this Part 110." It is clear from that regulation that monies received to satisfy debts which are outstanding from any election are considered to be contributions and as such are subject to the same treatment as any other contribution. 11 CFR 110.1(a)(2)(1), to which you refer, states:

"With respect to any election" means --

(i) In the case of a contribution designated in writing for a particular election, the election so designated, except that a contribution made after a primary election, caucus or convention, and designated for the primary election... shall be made only to the extent that the contribution does not exceed net debts from the primary election....

As this language indicates, "contributions" may be made to retire debts from a primary election. Moreover the Explanation and Justification of the Commission regulations at page 69 explains that Section 110.1 "makes clear the treatment of such contributions as... those to retire debts...." From these regulations the Commission concludes that any monies given to retire debts outstanding from an election are contributions for purposes of the Act.¹ As such they are subject to the prohibitions and limitations of the Act.²

This position is one which the Commission has repeatedly expressed. See for instance Advisory Opinion 1979-1 where the Commission specifically said that contributions made by persons other than the candidate to retire that candidate's campaign debts are subject to the limitations of 2 U.S.C. 441a and Part 110 of Commission regulations, and Advisory Opinion 1978-99 where, in considering a candidate committee's debt related to a primary election, the Commission said that the committee:

may accept contributions (otherwise lawful under the Act) to liquidate the debt from those persons who may have exhausted their general election contribution limit... but who have not exhausted their contribution limit with respect to... [the] candidacy for the primary election.

In addition, in a more recent opinion, Advisory Opinion 1980-122, the Commission concluded that in a situation where a candidate was involved in only a primary election and where all of the debts and obligations of the candidate's committee existed with respect to that election, that a single contribution limit of \$1,000 would apply with respect to contributions by individuals.

Thus, it is clear that monies given to a candidate's committee to retire outstanding debts are contributions subject to the \$1,000 ceiling set forth in 2 U.S.C. 441a(a)(1)(A) and 11 CFR 110.1(a)(1) and are prohibited if made by corporations, labor organizations or national banks. 2 U.S.C. 441b. See also the prohibitions found in 2 U.S.C. 441c, 441e, 441f.

¹ It should be noted that a candidate may use an unlimited amount of his/her personal funds to retire the debt of his/her campaign committee. 11 CFR 110.10(a).

² In a recent decision of the United States Court of Appeals for the Fifth Circuit the contention that 2 U.S.C. 441b would not prohibit contributions made after an election to retire debts from that election was summarily rejected. The court explained that to accept that view of 441b would permit candidate evasions of the Act's restrictions by running campaigns at a deficit and then collecting contributions after the election was over. Federal Election Commission v. Lance, 617 F.2d 365 372 n.4 (5th Cir. 1980). Also see United States v. Clifford, 409 F. Supp. 1070, 1074 (E.D.N.Y. 1976).

As for the Citizen Committee, since all monies given to retire debts outstanding from an election constitute contributions, those monies which you intend to collect to pay the interest on the outstanding debts from your primary election constitute contributions. Since the Citizen Committee would be receiving contributions it is a political committee. 2 U.S.C. 431(4). Moreover, since it is authorized by you to collect contributions which are on behalf of the Senate Committee, your principal campaign committee, both the Citizen Committee and the Senate Committee are subject to one overall contribution limit or a combined total of \$1,000 from any one person. Thus, the Commission concludes that contrary to your view, the Citizen Committee may only accept contributions which are permissible under 2 U.S.C. 441a and Part 110 of Commission regulations and the maximum allowable contribution must include amounts already contributed to the Senate Committee.

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 (AOs 1980-122, 1979-1, 1978-99)