



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

May 6, 1982

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-19

Ronald C. Peterson, Esq.  
Treasurer  
Cranston Presidential Advisory Committee  
609 South Grand Avenue  
Los Angeles, California 90017

Dear Mr. Peterson:

This responds to your letter of March 9, 1982, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to proper treatment of funds received by the Cranston Presidential Advisory Committee ("the Committee").

Your letter states that the Committee has been formed for the sole purpose of advising Senator Cranston on the desirability and feasibility of becoming a candidate for President.\*/ In this regard, the Committee intends to receive donations and make disbursements to "test the waters" for such a candidacy by Senator Cranston. You ask initially, in the event that Senator Cranston does decide to become a candidate, whether receipts and disbursements by the Committee during the testing the waters period must be reported retroactively and whether they are subject to the contribution and expenditure limitations, prohibitions, and requirements of the Act. The Commission answers both of these questions in the affirmative.

Commission regulations set forth exemptions from the definition of contribution and expenditure which permit an individual to finance a variety of activities to assist in making a determination of whether to become a candidate for Federal office. The regulation which grants the exemption from the definition of contribution provides:

- (1) Funds received and payments made solely for the purpose of determining whether an individual should become a candidate are not contributions. Activities permissible under this exemption include, but are not limited to, expenses

incurred for: conducting a poll, telephone calls and travel, to determine whether an individual should become a candidate. The individual shall keep records of all such funds received and payments made. If the individual subsequently becomes a candidate, the funds received and payments made are contributions and expenditures subject to the limitations, prohibitions and requirements of the Act. Such contributions and expenditures must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received or the payments made. This exemption does not include funds received or payments made for general public political advertising; nor does the exemption include funds received or payments made for activities designed to amass campaign funds that would be spent after the individual becomes a candidate.

11 CFR 100.7(b)(1), emphasis added. See also the parallel exemption to the definition of expenditure at 11 CFR 100.8(b)(1).

The Commission has recognized that this regulation has a retroactive effect in that the financing of all activities coming within the exemption must be reported and otherwise treated as contributions and expenditures for purposes of the Act and regulations when and if the individual becomes a candidate. Advisory Opinion 1982-3.

With respect to the threshold question posed in your request (i.e. the applicability of the Act's, contribution and expenditure limitations and prohibitions in the event Senator Cranston becomes a candidate) your letter raises the issue of whether the cited regulation is applicable to funds received and payments made by an "independent" committee (as opposed to an individual). Another issue raised in your request is whether the Committee may, prior to the candidacy of Senator Cranston, receive funds which are otherwise prohibited by the Act (e.g. corporate contributions). Again, the Commission answers both of these questions affirmatively.

In reaching its conclusion with regard to the first issue above, the Commission notes that Advisory Opinion 1982-3 specifically applied the "testing the waters" exemption to activities by the Committee. In that opinion, the Commission determined, in light of the fact that Senator Cranston had authorized the Committee to undertake the described activities, that the Committee was subject to the requirement that its receipts and disbursements would be subject to the limitations and prohibitions of the Act if Senator Cranston became a candidate.

With respect to the issue of whether the Committee may accept donations in excess of the \$1,000 and \$5,000 limits, 2 U.S.C. 441a(a), or from otherwise prohibited sources, 2 U.S.C. 441b, 441c, 441e, prior to Senator Cranston's status as a Presidential candidate, the Commission notes the express language of the regulation. It states that only at such time as the individual becomes a candidate do the prohibitions, limitations, and requirements of the Act become applicable to funds received by the Committee. 11 CFR 100.7(b)(1). In this regard, however, the provisions of 11 CFR 101.3 are applicable as of the date the individual in question becomes a candidate. Section 101.3 provides that:

When an individual becomes a candidate, all funds received and payments made in connection with his or her campaign prior to becoming a candidate shall be considered contributions or expenditures under the Act and shall be reported in accordance with 11 CFR 104.3 in the first report filed by such candidate's principal campaign committee. The individual shall keep records of the name of each contributor, the date of receipt and amount of all contributions received... and all expenditures made... in connection with the individual's campaign prior to becoming a candidate. Contributions received by an individual prior to becoming a candidate, which contributions are not in compliance with the Act, shall be returned to the contributor within ten (10) days after the individual becomes a candidate. The individual shall keep records of all refunds made. (Emphasis added).

The Commission wishes to emphasize and caution that as is apparent from the language of the quoted regulation, if Senator Cranston becomes a presidential candidate, the Committee would be required to make refunds or repayments of any excessive or prohibited contributions that were received during the "testing the waters" period. Such refunds or repayments would have to be made within 10 days after Senator Cranston becomes a presidential "candidate" as defined in the Act and Commission regulations. See 2 U.S.C. 431(2) and 11 CFR 100.3. Moreover, the initial receipt of funds that subsequently become prohibited contributions, as well as the mandatory refunds or repayments within 10 days of Senator Cranston's candidate status, would have to be disclosed in the first report required to be filed by Senator Cranston's principal campaign committee for the office of President.

Your letter further asks the Commission to consider seventeen additional questions so that all requirements of the Act can be met if Senator Cranston becomes a candidate for President. Your letter states specifically that: "Each of the following questions assumes both that the 'testing the waters' exemption is applicable to the Committee at this time and that Senator Cranston at some time in the future will become a candidate for President." The questions are not framed with respect to specific factual situations, but are instead posed as general questions of interpretation.

Under Commission regulations, written advisory opinion requests must set forth a specific transaction or activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future. 11 CFR 112.1(b)(1). The regulation goes on to state that requests presenting a general question of interpretation, do not qualify as advisory opinion requests. 11 CFR 112.1(b)(1). In reviewing your letter and the questions posed therein it is the opinion of the Commission that your questions 13, 15, 16, and 17 qualify for treatment as proper advisory opinion requests pursuant to Part 112 of the Commission's regulations. Your remaining questions, however, present generalized, nonspecific factual situations and are framed in a fashion that covers a wide range of possible activities by persons who may or may not be engaged in such activities under the auspices of the Committee. Accordingly, the Commission declines to answer those questions.

While the Commission cannot give an advisory opinion on those questions (i.e., 1 through 12, and 14), the Commission's response to your threshold question (i.e. receipts and disbursements by the Committee are to be treated retroactively as contributions and expenditures) should be

regarded as instructive. Moreover, this Commission notes that 101.3 of its regulations requires an individual, prior to becoming a candidate, to keep records of the name of each contributor, the date of receipt, and amount of all contributions received and expenditures made in connection with the individual's campaign. Since the receipts and disbursements of the Committee would retrospectively become contributions and expenditures if Senator Cranston becomes a presidential candidate, the cited regulation applies to financial activity occurring in the testing the waters period. Your remaining questions ask:

13. Separate advisory groups are being formed to analyze, research, discuss and brief Senator Cranston on important public issues such as foreign policy, national defense, and domestic economic policy. These advisory groups will assist the Senator in fulfilling his responsibilities as a United States Senator, in addition to making him better informed on issues that would be important in any campaign for President of the United States. The advisory groups would not themselves be engaged in "testing the waters" activities. Would the receipt and disbursement of funds by such advisory groups (not by the Committee) be contributions and expenditures?

\* \* \*

15. Can an individual make a \$1,000 contribution to the Committee and another \$1,000 contribution to Senator Cranston or his authorized political committee or agents for his candidacy for reelection to the Senate in 1986, provided the requirements of 11 CFR 110.1(f)(3) are met?

16. Would an individual's \$1,000 contribution to the Committee be attributable to 1984 for purposes of, the \$25,000 annual limitation?

17. Do expenditures for "testing the waters" count towards the expenditure limitations provided in 11 CFR 110.8?

The Commission answers all of these questions in the affirmative. With respect to your question 13, the Commission assumes that the advisory groups referred to here are those mentioned in question 5 of Advisory Opinion 1982-3. As stated in Advisory Opinion 1982-3, the Committee proposed organizing these groups to provide advice to the Senator on "critical and substantive issues." While the advisory groups would not themselves be engaged in "testing the waters" activity, the fact that they have been organized by the Committee to further the Committee's purpose of "testing the waters" and will provide information of importance to Senator Cranston in his possible presidential campaign, would bring the activity of the groups within the "testing the waters" exception. See 11 CFR 100.7(b)(1) and Advisory Opinion 1982-3. Accordingly, receipts and disbursements by the advisory groups are subject to the record-keeping requirements of 11 CFR 101.3 and would become contributions and expenditures in the event that Senator Cranston becomes a candidate for President. See Advisory Opinion 1982-3.

Your question 15 asks whether an individual may make a contribution of \$1,000 to the Committee and another \$1,000 contribution to Senator Cranston or his authorized political committee for his candidacy for reelection to the Senate in 1986. As you indicate, Commission

regulations permit an individual to make such contributions so long as the contributor clearly designates in writing for which office each contribution is intended; the candidate maintains separate campaign organizations (including separate committees and separate accounts); and no funds are transferred, loaned or otherwise contributed between or among the separate campaigns and no expenditures are made by one campaign on behalf of the other. 11 CFR 110.1(f). Accordingly, the Commission concludes that the Committee may accept a contribution from an individual who has or intends to make a separate contribution to Senator Cranston's Senate reelection committee so long as these requirements of Commission regulations are met.

Finally, with respect to your questions 16 and 17, the Commission reiterates what it concluded in Advisory Opinion 1982-3, in that contributions to the Committee are subject to the Act's contribution and expenditure limitations, prohibitions, and requirements when and if Senator Cranston becomes a candidate for President, including all the requirements set forth in 11 CFR Part 110 of the Commission regulations.

The Commission expresses no opinion with respect to application of the Internal Revenue Code of 1954 nor any other tax laws in the situation presented here, since any issues under those laws are outside its jurisdiction. See I.R.C. §41 and §527.

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)

Frank P. Reiche  
Chairman for the Federal Election Commission

Enclosure (AO 1982-3)

\* Your letter makes reference to the letter of Committee Chairperson, Allyn Kreps, dated January 20, 1982 and incorporates the facts set forth therein in your letter to the Commission. As you know, Mr. Kreps' letter was regarded as an advisory opinion request and in response to it the Commission issued Advisory Opinion 1982-3.