



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 25, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-39

Mr. Marvin S. Shapiro, Treasurer
Cranston for Senate Committee and Cranston for Senate Committee-1986
Suite 900
1800 Avenue of the Stars
Los Angeles, California 90067

Mr. Ronald C. Peterson, Treasurer
Committee to Advise United States Senator Alan Cranston (D. Calif.) on the
Desirability and Feasibility of Seeking the Democratic Nomination in 1984
for the Office of President of the United States
609 South Grand Avenue
8th Floor
Los Angeles, Ca 90017

Dear Messrs. Shapiro and Peterson:

This responds to your letter of May 10, 1982, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the transfer of funds among political committees authorized by Senator Alan Cranston.

Your letter states that the Cranston for Senate Committee ("the 1980 Committee") and the 1986 Senate Campaign Committee ("the 1986 Committee") are registered with the Commission as principal campaign committees for Senator Alan Cranston for the 1980 California Senatorial election and the 1986 Senatorial election respectively. Neither of these committees has filed a termination report with the Commission, and both continue to report their respective financial activity.

The Committee to Advise United States Senator Alan Cranston on the Desirability and Feasibility of Seeking the Democratic Nomination in 1984 for the Office of President of the United States ("CPAC") is a committee authorized by Senator Cranston and is operating under the "testing the waters" exemption set forth in Commission regulations. 11 CFR 100.7(b)(1).

You state that during 1981, the 1980 Committee transferred \$235,946 to the 1986 Committee.¹ You note that because fund raising is both time-consuming and expensive, CPAC would like to finance its activities, in part, out of the excess funds which remained from Senator Cranston's 1980 campaign and which were transferred from the 1980 Committee to the 1986 Committee. You propose to transfer the 1980 excess funds back to the 1980 Committee, which in turn, will hold those funds and disburse those funds to CPAC on an "as needed" basis. You add that funds will not be transferred to CPAC in excess of the amounts needed to carry out CPAC's "testing the waters" activities. You ask whether the transfer of funds from the 1986 Committee to the 1980 Committee, and the 1980 Committee's subsequent transfers to CPAC, are permissible under the Act and Commission regulations. The Commission answers this in the affirmative.

Under the Act, amounts received by a candidate that are in excess of any amount necessary to defray his or her expenditures may be used for any lawful purpose.² 2 U.S.C. 439a. Further, Commission regulations do not limit the transfer of funds between a candidate's current campaign committee and a previous campaign committee of the same candidate. See 11 CFR 110.3(a)(2)(iv), and Advisory Opinion 1978-37, copy enclosed. Thus, the Commission concludes that the 1986 Committee may lawfully transfer to the 1980 Committee the entire amount of excess funds which the 1980 Committee originally transferred to the 1986 Committee.

With respect to the question of whether the 1980 Committee may hold those excess funds and make transfers to CPAC, the Commission notes that 2 U.S.C. 439a permits excess campaign funds to be used for any lawful purpose. This would include, in the instant case, funds transferred to CPAC which would be used to "test the waters" for a possible campaign for Senator Cranston for the Democratic nomination for the Office of President of the United States. In this regard, your request raises the issue of whether individuals, whose contributions to the 1980 Committee comprise the excess funds which would be transferred to CPAC, may make donations to CPAC without their earlier contributions to the 1980 Committee counting against the individual's contribution limits in the event Senator Cranston becomes a presidential candidate for 1984. The Commission has held that funds received by a candidate prior to the date of a previous election are not counted against an individual's contribution limits with respect to a future election in the event that the candidate transfers excess funds from a previous campaign committee to a currently registered campaign committee. Advisory Opinions 1980-30, and 1977-24 (copies enclosed). While CPAC is not a currently registered campaign committee, any donations made to it would retroactively become contributions subject to the prohibitions and limitations of the Act in the event that Senator Cranston becomes a presidential candidate. Advisory Opinion 1982-3. Thus, while an individual's donation to CPAC would count against that individual's contribution limitations in the event that Senator Cranston becomes a presidential candidate; that same individual's earlier contribution to the 1980 Committee (made prior to the general election of 1980) would not count against his or her contribution limits with respect to either a possible 1984 presidential campaign or a 1986 Senatorial campaign. Finally,

¹ A review of reports filed by the 1980 Committee disclosing the transfers indicate that the entire amount of the transfer is comprised of funds received by the 1980 Committee prior to the date of the November 4, 1980 general election.

² Because Senator Cranston was in office on January 8, 1980 the prohibition against a personal use of the excess campaign funds does not apply. See 2 U.S.C. 439a.

the Commission notes that any transfer of excess 1980 funds by the 1986 Committee back to the 1980 committee, and then to CPAC, must be properly reported under the Act. See 2 U.S.C. 434 and 11 CFR 104.1 et seq.

The Commission expresses no opinion as to the applicability of Senate Rules to the described transaction, nor as to any income 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)

Frank P. Reiche
Chairman for the Federal Election Commission

Enclosures (AOs 1982-3, 1980-30, 1977-24, and 1978-37)