



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 30, 1982

CERTIFIED MAIL RETURN  
RECEIPT REQUESTED

ADVISORY OPINION 1982-52

Doug Ross  
State Senator of Michigan 15th District  
P.O. Box 30036  
Lansing, Michigan 48909

Dear Senator Ross:

This responds to your letter of August 26, 1982, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the transfer of funds from your State campaign committee to your Federal campaign committee for the purpose of retiring the Federal committee's debts.

Your request states that you recently concluded an unsuccessful attempt to win nomination to the United States House of Representatives from the 17th Congressional District of Michigan in the August 10 primary election. As a result of this campaign, your Congressional campaign committee is presently carrying a substantial debt. At this time, you are also in the process of dissolving your campaign finance committee for State Senate.<sup>1</sup> Specifically, you ask whether the Act would permit you to transfer monies from your State committee to your Federal committee for the purpose of defraying that committee's debts.

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<sup>1</sup> According to information on file with the Michigan Secretary of State's office, you were last a candidate for the Michigan State Senate in 1978. Subsequently, your State committee has been operating as an officeholder expense fund under section 169.249 of the Michigan Campaign Financing and Advertising Act. The most recent report filed by your State committee covering the period January 1, 1981 to December 31, 1981 indicates that your State committee raised approximately \$37,230 during 1981, incurred various expenses associated with your activities as a State officeholder, and had an ending cash balance of approximately \$13,091. Accordingly, the Commission's understanding is that the surplus State funds to which you refer in your request were raised during the same election cycle in which you sought nomination to the United States House of Representatives. See 11 CFR 100.3(b).

The Commission concludes that the Act would not prohibit such a transfer. However, your State committee is not presently a "political committee" for purposes of the Act. Its treasury may contain funds which are not permissible under the Act.<sup>2</sup> As a result, any transfer of funds from the accounts of your State committee to those of your Federal committee would carry certain consequences and impose certain obligations on both committees, depending upon the amount of money transferred.

Initially, the Commission notes that a transfer of funds from your State to your Federal committee would not be subject to the Act's limitations on contributions as set forth at 2 U.S.C. 441(a) (1). Commission regulations provide that transfers of funds may be made without limit between "affiliated" committees. See 11 CFR 102.6(a). Included within the definition of affiliated committees are all those political committees that are established, financed, maintained or controlled by the same person or group of persons. See 11 CFR 100.5(g)(2), 110.3(a)(1)(i); 2 U.S.C. 441a(a)(5). Moreover, Commission regulations recognize that two committees may be deemed "affiliates" even though one of them is not a political committee under the Act. See 11 CFR 102.6(a). Thus, your State committee would be regarded as affiliated with your Federal committee for the purpose of making the proposed transfer. While transfers of funds may be made between them without limit, such transfers will nevertheless apply toward the thresholds for determining whether your State committee is a "political committee" as defined at 11 CFR 100.5. See 11 CFR 102.6(a).

Accordingly, if your State committee transfers more than \$1,000 to the Federal committee in a given calendar year, then the State committee would become a political committee under the Act. See 2 U.S.C. 431(4)(A); 11 CFR 100.5, 102.6(a); Advisory Opinion 1981-1, copy enclosed. The State committee would then be required to register and report as a political committee, disclosing on its first report the sources of the funds then in its accounts. See 11 CFR 104.12. This cash on hand balance would be assumed to be composed of those contributions most recently received by the State committee, and the State committee would have to itemize such prior contributions to the extent required by the Act and Commission regulations. See 2 U.S.C. 434(b), 11 CFR 104.3(a). The State committee would also be required to exclude any contributions not permissible under the Act from those funds proposed to be transferred to the Federal committee. See 11 CFR 104.12 and Advisory Opinions 1980-117 and 1981-6, copies enclosed.

This means, for example, that if the State Committee has a \$50,000 cash balance available for transfer to the Federal committee, but \$10,000 (of the \$50,000 of contributions received most recently) was contributed by labor organizations, then only \$40,000 may be included in the cash on hand of the State committee for transfer to the Federal committee.<sup>3</sup> Moreover, since the

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<sup>2</sup> In this regard, for example, the Commission notes that the Michigan Campaign Financing and Advertising Act governing contributions to your State committee does not on its face purport to prohibit contributions by labor organizations. However, 2 U.S.C. 441b prohibits labor organizations from making, and Federal candidates from accepting, any contribution in connection with any election to Federal office.

<sup>3</sup> Contributions from national banks, corporations, government contractors, and foreign nationals may not be included in the cash on hand since those entities are also prohibited from making

contribution limits apply to the Federal committee and since the State committee upon becoming a political committee under the Act is affiliated with the Federal committee, the contribution limits of 2 U.S.C. 441a(a) apply to the contributors of the \$40,000 held by the State committee. Accordingly, the contributions of any person that are included in the \$40,000 must be aggregated with any contribution previously made by such person to the Federal committee. The aggregate total may not exceed the \$1,000 limit of 2 U.S.C. 441a(a)(1)(A), or the \$5,000 limit of 2 U.S.C. 441a(a)(2)(A) if the contributor is a qualified multicandidate committee. Any amounts that exceed the 441a(a) limits may not be transferred and would require the \$40,000 to be reduced to the extent of such excessive amounts.

When the State committee ascertains the proper amount of funds that it may include in its cash on hand as a political committee, and files a report itemizing such funds as required by the Act and regulations, it may also report a transfer of that amount to its affiliated Federal committee. This report may be both the initial and the termination report of the State committee. See 11 CFR 102.3. The Federal committee should report its receipt of the transfer as a miscellaneous receipt from an affiliated committee.

If, on the other hand, your State committee transfers \$1,000 or less to your Federal committee during a given calendar year, then the State committee would not become a political committee under the Act. See 11 CFR 102.6(a), 100.5. Under such circumstances, the State committee may make the transfers, but only in accordance with the alternate procedures set forth at 11 CFR 102.5(b). This provision would require the State committee to either: 1) establish a separate account into which only funds subject to the limitations and prohibitions of the Act are deposited and from which the transfers to the Federal committee would be made; or 2) demonstrate through a reasonable accounting method that when the transfers are made to the Federal committee, the State committee has received sufficient funds subject to the Act to make the transfers. See also Advisory Opinions 1982-38, 1980-130 and 1980-38, copies enclosed.

The Commission expresses no opinion concerning the application of any State law which may govern disposition of your State campaign funds or concerning any other laws over which the Commission has no 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,

(signed)

Frank P. Reiche  
Chairman for the Federal Election Commission

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contributions in a Federal election whether directly or indirectly, or through any other person. 2 U.S.C. 441b, 441c, and 441e.

Enclosures (AO 1982-38, 1981-6, 1981-1, 1980-130, 1980-117, 1980-38)