



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 26, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1983-13

Sidney H. Kalban
Phillips & Cappiello, P.C.
346 West 17th Street
New York, New York 10011

Dear Mr. Kalban:

This refers to your letter of April 12, 1983, as supplemented by letters dated June 29 and July 29, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a contribution received by the National Maritime Union Political and Legislative Organization on Watch ("PLOW") from the estate of a deceased member of the National Maritime Union ("NMU").

Your request, as supplemented, sets forth the following facts: in 1982 PLOW, the separate segregated fund of NMU, a labor organization, received approximately \$20,500 from the estate of Constantinos Rousos who died in 1979. This amount was distributed to PLOW pursuant to a court approved settlement of a will contest involving two wills of the decedent. The first will was executed in 1962 and made no provision for any bequest to PLOW. The second will was executed in 1974 and contained a general bequest to PLOW of all of Mr. Rousos' estate after the payment of debts and expenses. PLOW proposes to accept the full amount of the bequest but to distribute it in annual increments of \$5,000 to PLOW's general account. PLOW also proposes to retain the balance in a special escrow account. This account would be maintained in PLOW's name as a separate bank account and would earn interest. Withdrawals from this account would be made in aggregate amounts not exceeding \$5,000 per calendar year until the account balance, including accrued interest, is fully paid out to PLOW's general account.

Your request asks whether the foregoing procedure would comply with the Act and Commission regulations. The Commission concludes that the proposed method of retaining and distributing the Rousos estate proceeds to PLOW would comply with the Act and regulations provided the relevant transactions are reported by PLOW in the manner described below, and provided further

that PLOW does not pledge or otherwise obligate the escrow account balance in any manner to augment other PLOW or NMU funds.

The initial issue raised by your request is whether the Act and Commission regulations allow or limit contributions by a decedent's estate. The Act and Commission regulations do not generally prescribe the categories of persons who are qualified to make contributions.¹ Rather, the Act specifies those entities that are prohibited from making contributions: corporations, national banks, labor organizations, Federal contractors, foreign nationals, one person in the name of another. 2 U.S.C. 441b, 441c, 441e, 441f. Other entities or persons are not prohibited by the Act from making contributions, but their contributions are limited by 441a which applies to contributions by a "person," as well as to certain contributions by multicandidate committees and individuals. See 2 U.S.C. 441a(a)(1), (a)(2), (a)(3). The term "person" is defined to include a variety of entities including an individual, an association, or "any other organization."²

Accordingly, given the absence of any specific prohibition in the Act as regards contributions from a decedent's estate (pursuant to a specific testamentary bequest), and given the expansive definition of the term "person" which, in turn, determines the applicability of the monetary limits in 2 U.S.C. 441a(a)(1), the Commission concludes that specific testamentary bequests to a political committee are contributions when distributed by the decedent's estate and are subject to the limits of 441a(a)(1). Compare Advisory Opinion 1973-7, copy enclosed. This conclusion is also supported by related provisions of the Internal Revenue Code which appear to recognize that political contributions are made by estates, but prohibit the estate from taking a tax credit for such contributions. 26 U.S.C. 41(d), 642(a)(2).

In reaching the above conclusion, the Commission views the testamentary estate of a decedent as the successor legal entity to the testator and thus will apply the Act and its limits to that entity as the alter ego of the living testator. This means, for example, that if the testator was a foreign national at the time of death, the estate would be barred from making a contribution in view of the prohibition in 2 U.S.C. 441e. Based on the information provided with this opinion request, it appears that while the decedent was born in Greece, he was a citizen of the United States.³

To conclude that the decedent's estate is under the same limits of 441a as the testator would have been, also means that contributions from the estate may be accepted by the donee only if they comply with those limits. The proposal described in this opinion does result in PLOW obtaining delivery and control in 1982 with respect to the total bequest (\$20,520). However, since Mr. Rousos, the testator, could have established a testamentary trust (rather than make a specific

¹ The regulations do specify certain conditions that must be satisfied for contributions by minor children in order to assure that minors are not conduits for contributions which should be attributed to others, e.g. parents, guardians, or other adults. 11 CFR 110.1(i).

² The only entity excluded from the definition is the Federal Government, or any authority thereunder.

³ Your request includes copies of NMU records indicating that Mr. Rousos was a Citizen of the United States when he joined NMU in 1937. Since there is no record that his U.S. citizenship was ever renounced or rescinded, PLOW believes that he was a citizen at the time of his death.

bequest by will) directing the trustee to make annual distributions to PLOW of \$5,000 or less, and since the probate of his estate has closed, the Commission will permit the described separate bank escrow account to be used by PLOW.

Such an account must, however, be administered and drawn upon only in a fashion whereby PLOW does not realize any augmentation of, or benefit to, its other funds by reason of any amounts on deposit in the special escrow account. For example, neither PLOW nor NMU may pledge, assign, or otherwise obligate the escrow funds in any manner that could result in anything of value accruing to PLOW, NMU, or any of their affiliated entities. In this connection, the Act and regulations define "contribution" to include the gift or loan of "anything of value." 2 U.S.C. 431(8)(A)(i), 11 CFR 100.7(a)(1). While interest may be earned on the escrow funds, that interest becomes part of the principal for purposes of the \$5,000 annual limit on distributions to PLOW's general account.

With respect to reporting the distribution from the escrow account, the Commission is of the opinion that the following procedure should be used. First, the bank where the special escrow account is maintained should be disclosed by PLOW, by amendment to its Statement of Organization, as a PLOW depository. 2 U.S.C. 433(b)(6), 11 CFR 102.2(a)(1)(vi). Secondly, the balance in the special escrow account should be reported by PLOW on each of its reports as a debt or obligation owed to PLOW, line 9 of FEC Form 3X with a supporting Schedule D. 11 CFR 104.3(d), 104.11(a). The Schedule D, to be filed with each report, should include the balance as of the close of the relevant reporting period, including any interest credited to the account by the bank. The bank and the escrow account should be identified as a "debtor" to PLOW and a brief description as to the nature of the escrow account "debt" should be shown on the Schedule D, e.g. Rousos estate escrow contribution. As escrow withdrawals and deposits are made for the general account of PLOW, the amount of any withdrawal should be reported as a contribution received by PLOW from the Rousos estate fund using line 11(a) and Schedule A. A corresponding reduction should also be made to line 9 (and Schedule D) for all such escrow withdrawals and general fund deposits. The foregoing reporting procedure should be followed until the final escrow withdrawal is made and the escrow account is thus at a zero balance.

The Commission cautions that this opinion relates only to contributions by specific testamentary bequest via the decedent testator's estate. It should not be read as reaching any issues, or expressing any views, with respect to political contributions made through inter vivos trusts, guardianships, powers of appointment, or various other procedures used for estate planning purposes. In addition, the Commission expresses no opinion as to application of any other Federal statute, 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)

Danny L. McDonald
Chairman for the Federal Election Commission

Enclosure (AO 1978-7)