



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 21, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1983-27

Captain Eugene B. McDaniel
Friends of Red McDaniel
P.O. Box 160
Dunn, North Carolina 28334

Dear Captain McDaniel:

This responds to your letter of August 30, 1983, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a proposed use of excess campaign funds.

You state that in 1982 you ran unsuccessfully as a candidate for the United States House of Representatives from the Third Congressional District of North Carolina. You also explain that you have excess campaign funds remaining from that election and now wish to donate these funds to an educational foundation known as the American Defense Institute ("ADI").

According to your request, ADI is a non-profit corporation organized under the laws of Virginia. You state that its application for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1954 is pending before the Internal Revenue Service. You also state that ADI's purpose is solely educational and that it does not and will not attempt to influence Federal elections. You note that, pursuant to this educational purpose, ADI plans to award post-doctoral fellowships, conduct programs for college and high school students on topics related to national defense and foreign policy, and publish scholarly materials on foreign policy and national defense.

Your letter states that ADI will have as its governing body a Board of Directors, consisting of at least three members, and that you will serve as Chairman of the Board for at least the years 1983-84. You explain that you will not be compensated for this service, although you will be reimbursed for out-of-pocket expenditures, such as travel expenses, incurred on behalf of ADI. You note that any such reimbursements will be approved by the entire Board of Directors.

According to your request, you will not be employed as an officer or employee of ADI, and will not receive any compensation for personal services for ADI, during 1983 or 1984. You add that all compensation decisions will be made by a compensation committee established by ADI's Board of Directors, and that you will not serve on that committee during 1983 or 1984. Finally, you state that neither you nor your wife or children will ever be eligible to receive any awards, grants, or fellowships from ADI. Similarly, neither you nor your wife or children will be eligible for royalties or other special fees paid by ADI.

You ask, in light of these facts, whether your 1982 campaign committee, Friends of Red McDaniel ("the Committee"), may donate its excess campaign funds to ADI.

Under the Act and Commission regulations, excess campaign funds may be used for a variety of specific purposes. They may be used to defray any ordinary and necessary expenses incurred in connection with a candidate's duties as a Federal officeholder; they may be contributed to any organization which is exempt from Federal taxation under 26 U.S.C. 170(c); they may be contributed without limitation to any national, state, or local committee of a political party; or they may be used for "any other lawful purpose." Such funds may not be converted by any person to any personal use if the candidate involved was not a Member of Congress on January 8, 1980. 2 U.S.C. 439a and 11 CFR 113.2.

Since you were not a Member of Congress on January 8, 1980, the prohibition on conversion to personal use applies to the excess campaign funds of the Committee. Accordingly, the Commission concludes that so long as none of the funds donated to ADI by your campaign committee are paid over to you for your personal use, the proposed donation would not be prohibited under 2 U.S.C. 439a. The remaining issue is whether or not this proposed use of excess campaign funds falls within the definition of some "other lawful purpose" as that term appears in and is construed under 2 U.S.C. 439(a). The suggested use does not appear to violate any of the provisions of the Act; thus, with respect to the application of the Act, it would be a lawful use. The Commission does not, however, express any opinion regarding the lawfulness of this use under any other Federal or State statute, or rule of law. Nor does the Commission express any views with respect to the Federal or other tax ramifications of this use as such issues, if any are not within the Commission's jurisdiction.

With respect to the personal use issue, if the proposed donation occurs, you would not be permitted to receive any funds from ADI, including, but not limited to, any compensation, loans, awards, grants, or fellowships, until such time as ADI has expended, for purposes unrelated to your personal benefit, the entire amount so donated. If any of the funds donated by your committee accrue to your benefit, a prohibited personal use of excess campaign funds would result. An exception to the foregoing prohibition will be made for the reimbursement by ADI of ordinary and necessary expenses that you incur on behalf of ADI in your capacity as Chairman of its Board of Directors. See 2 U.S.C. 439a and 11 CFR 113.2; see also Advisory Opinions 1980-113 and 1980-138, copies enclosed.

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

Enclosures (AOs 1980-113 and 1980-138)