



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

October 26, 1983

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1983-30

Ms. Mary E. Mangotich  
Bilby, Shoenhair, Warnock & Dolph, P.C.  
P.O. Box 871  
Tucson, Arizona 85702

Dear Ms. Mangotich:

This responds to your letter of September 13, 1983, requesting an advisory opinion on behalf of Dr. Conrad Joyner concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the establishment of a special fund to defray legal expenses incurred in connection with litigation challenging the constitutionality of a provision of the Arizona Constitution.

According to your letter, Dr. Joyner was a candidate in a 1982 primary election in Arizona for the United States House of Representatives. You state that at the time Dr. Joyner sought election to the House of Representatives, he was serving as an elected member of the Board of Supervisors of Pima County, Arizona. Your letter further states that under Article 22, §18, of the Arizona Constitution, an incumbent in a salaried elective office may not seek nomination or election to any other salaried local, state or federal office, except during the final year of his or her term. Your request explains that before declaring his candidacy, Dr. Joyner filed suit in United States District Court in Arizona challenging this provision, and that the court declared it to be invalid. You add that Dr. Joyner then announced his candidacy and sought election to the House of Representatives, without resigning his position on the Board of Supervisors. Subsequently, the United States Court of Appeals for the Ninth Circuit reversed the decision of the district court. You state that, in response to the appeals court ruling, Dr. Joyner is filing a petition for writ of certiorari with the United States Supreme Court.

According to your letter, Dr. Joyner wishes to establish a special fund to pay the legal fees and costs incurred in connection with this petition to the Supreme Court. Your letter notes that all monies received by this special fund ("the fund") will be deposited in a separate bank account

and that none of these monies will be commingled with funds from Dr. Joyner's principal campaign committee.

You also explain that all solicitations to the fund will be made in person or by mail and will be accompanied, or immediately followed, by a letter stating the purpose of the fund and noting that no donations to the fund will be used for the purpose of influencing any election. You add that all solicitations to the fund will be conducted completely separately from any solicitations made on behalf of his principal campaign committee. You ask whether donations to and disbursements by such a fund would be considered contributions or expenditures under the Act.

Under the Act, a "contribution" is defined as a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. 431(8). Similarly, the term "expenditure" is defined in an identical fashion as relating to payments made for the purpose of influencing a person's nomination or election to Federal office. 2 U.S.C. 431(9).

The Commission concludes that to the extent the proposed fund is used exclusively for the purposes of defraying legal costs and expenses resulting from the litigation described in your request, donations to and disbursements from the fund would not constitute contributions or expenditures under the Act. Accordingly, neither the source nor the amount of donations to the fund would be limited under the Act or Commission regulations. Nor would the Act or regulations require any reporting of receipts or payments of the fund. In reaching this conclusion, the Commission also assumes that none of the residual monies, upon dissolution of the fund, will be distributed or transferred to Dr. Joyner's campaign committee or to any other political committee. See Advisory Opinion 1982-35, copy enclosed.

In Advisory Opinion 1982-35 the Commission considered a fund that was established and used exclusively to finance litigation challenging, on constitutional grounds, a party rule which required a party convention endorsement for any candidate who wished to enter the party's primary election for Federal office. The Commission concluded that the proposed fund was not subject to the limitations and disclosure requirements of the Act and regulations. The situation described in your request is indistinguishable in all material aspects from the situation presented in the cited opinion. 2 U.S.C. 437f(c). Thus, the Commission reaches the same result in this opinion.

The Commission expresses no opinion regarding any other Federal or state statute, nor regarding any Federal or other tax ramifications, since those issues are not within 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 1982-35)