



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

February 23, 1984

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-1

Edward A. Dudek, Esq.  
Frisch, Dudek and Slattery, Ltd.  
825 N. Jefferson Street  
Milwaukee, Wisconsin 53202

Dear Mr. Dudek:

This responds to your letter of December 29, 1983, requesting an advisory opinion on behalf of the Re-Elect Clement J. Zablocki to Congress Club ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed disposition of excess campaign funds.

According to your request, the Committee is the authorized campaign committee of the late Representative Clement J. Zablocki. You state that the Committee has approximately \$40,000 remaining in its treasury, and that it plans to file a termination report as soon as it disburses its remaining funds. You also state that the Committee's remaining funds include a contribution that was pledged at a fund-raising event held before Representative Zablocki's death and received by the Committee six days after his death. In light of these facts, you ask whether the Committee may contribute its excess funds to any organization described in section 501(c)(3) of the Internal Revenue Code, and whether the Committee may retain the pledged contribution and dispose of it along with other excess funds.

Under 2 U.S.C. 439a, the donation of a candidate's excess campaign funds to any organization described in section 170(c) of Title 26 is expressly made lawful. Such funds may also be distributed or may be used for "any other lawful purpose." Therefore, in answer to your first question, the Commission concludes that the Committee may lawfully contribute its excess funds to any 501(c)(3) organization that is also a §170(c) organization.<sup>1</sup> The Commission notes that even if a proposed recipient of the funds is not a §170(c) organization, the donation of the funds, though not explicitly made lawful under the Act, might still be permissible under the "any other lawful purpose" provision of 439a. The legality of a donation to other than a §170(c)

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<sup>1</sup> See Publication 78 of the Internal Revenue Service entitled: A Cumulative Listing of Organizations Described in Section 170(c) of the Internal Revenue Code of 1954.

organization would, however, depend on the applicable provisions of Wisconsin state law. See Advisory Opinion 1983-27, copy enclosed.

As to your second question concerning disposition of a contribution received after Mr. Zablocki's death, the Commission concludes that in the specific circumstances you have presented the contribution may be regarded as "excess campaign funds" under the Act and regulations.<sup>2</sup> See 2 U.S.C. 439a and 11 CFR 113.1(e). The significant facts that the Commission relies on in reaching this conclusion are: the Committee is in a cash surplus position, it intends to discontinue all campaign related activities, and it has no 1984 primary debts to retire. Accordingly, while nothing in the Act or Commission regulations would prohibit the Committee from returning the contribution to the donor, it may also donate it to a 501(c)(3) organization that is also a §170(c) organization. See discussion above. The application of any state law to the Committee's proposed donation of this contribution to a §170(c) organization would be preempted and superseded by the Act, since the contribution is regarded as part of the Committee's "excess campaign funds." See 2 U.S.C. 453 and 11 CFR 108.7.

The Commission expresses no opinion as to any tax ramifications of the described transactions, since these 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)

Lee Ann Elliott  
Chairman for the  
Federal Election Commission

Enclosure (AO 1983-27)

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<sup>2</sup> The Commission does not address any issues that might arise as a result of a candidate's withdrawal from an election. Your request indicates that the Committee intends to disburse its remaining funds for noncampaign purposes and then file a termination report.