



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 23, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-3

Michael Chanin
Powell, Goldstein, Frazer & Murphy
1110 Vermont Ave, N.W.
Suite 1050
Washington, D.C. 20005

Dear Mr. Chanin:

This responds to your letter of January 16, 1984, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use of funds currently in a trust fund for repaying loans to Charles C. "Cliff" Finch's 1980 presidential campaign.

This request was first submitted by Mr. Finch in 1980. At that time, the Office of General Counsel requested additional information regarding the trust fund. You have provided this information with the present request. You state that on November 26, 1975, Cliff Finch established by oral agreement the "Cliff Finch Colonel's Fund," with Benny Pittman as trustee, as a means to repay debts incurred by Mr. Finch's successful campaign that year for governor of Mississippi. The agreement was reduced to writing on August 29, 1981. By its terms, the trust would receive contributions of up to \$200 from only individuals, who in return would be designated as "Colonels" or "Honorary Colonels" on the governor's staff. The trust agreement provides that disbursements from the trust are to be made for only these specified purposes: (1) to retire existing debts of Mr. Finch's 1975 gubernatorial campaign; (2) to pay Mr. Finch's unreimbursed expenses as governor; (3) to pay for any memorabilia as well as holiday and special occasion communications given to contributors to the trust; (4) to retain unexpended funds for use in any future political campaign by Mr. Finch; and (5) to convey any remaining balance to the State of Mississippi at the termination of the trust. The trust terminates at Mr. Finch's death or the year 2005, whichever occurs first.

You have also submitted affidavits by Benny Pittman, the trustee, and Dr. Howard Clark, a witness, attesting that the written agreement accurately reflects the terms of the oral agreement at the creation of the trust and that the trust has operated according to these terms since its inception. Mr. Finch was a candidate for the U.S. Senate in 1978 and became a prenomination

presidential candidate in 1980. You state that trust assets have not been used by Mr. Finch in either campaign. You now ask whether trust assets may be used to retire Mr. Finch's 1980 presidential campaign debts.

The Commission took the position in Advisory Opinion 1978-35 that trust funds somewhat similar in origin to those at issue here were personal funds. However, based on further review, the Commission believes that because these trust funds were raised for state campaign and other political purposes, they should more properly be treated as funds of a state campaign. The Commission accordingly will no longer follow or apply the conclusions of Advisory Opinion 1978-35 to this or other factual situations. The question then becomes whether the trust may transfer the funds to Mr. Finch's 1980 presidential committee for the purpose of defraying that committee's debts.

The Commission concludes that the Act would not prohibit such a transfer. The trust, however, is not presently a "political committee" for the purposes of the Act. Although the trust agreements limit contributions to only those made by individuals, its treasury may still contain funds which are not permissible under the Act. Any transfer of funds from the trust to the presidential committee would carry certain consequences and impose certain obligations on both the trust and the presidential committee, depending upon the amount of funds transferred. See Advisory Opinion 1982-52.

Initially, the Commission notes that a transfer of funds from the trust to the presidential committee would not be subject to the Act's limitations on contributions as set forth at 2 U.S.C. 441a(a). Commission regulations provide that transfers of funds may be made without limit between "affiliated" committees. 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 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2), 110.3(a)(1)(i). Moreover, Commission regulations recognize that two committees may be deemed "affiliates" even though one of them is not a political committee under the Act. 11 CFR 102.6(a). Although the trust fund is not administered by Mr. Finch, the trust arrangements give Mr. Finch the beneficial use of trust funds for any future political campaign, thus both the trust fund and the presidential committee are controlled by the same person for campaign-related purposes so that the trust fund would be deemed affiliated with the presidential committee for the purpose of making the proposed transfer. While transfers of funds may be made between these committees without limit, such transfers will nevertheless apply toward the threshold for determining whether the trust is a "political committee" as defined at 11 CFR 100.5. See 11 CFR 102.6(a).

Accordingly, if the trust transfers more than \$1,000 to the presidential committee in a given calendar year, the trust would become a political committee under the Act. See 2 U.S.C. 431(4)(A); 11 CFR 100.5(a), 102.6(a); Advisory Opinion 1981-1. The trust 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 trust, and the trust 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 trust would also be required to exclude

any contributions not permissible under the Act from those funds proposed to be transferred to the presidential committee. See 2 U.S.C. 441a, 441b, 441c, and 441e; 11 CFR 104.12; Advisory Opinion 1981-6. This means that direct or indirect contributions from corporations, national banks, labor organizations, government contractors, and foreign nationals must be excluded from the funds to be transferred. 2 U.S.C. 441b, 441c, 441e.

Moreover, since the contribution limits apply to the presidential committee and since the trust upon becoming a political committee under the Act also becomes affiliated with the presidential committee, the contribution limits of 2 U.S.C. 441a(a) apply to the contributors of the funds held by the trust. Accordingly, the contributions of any person that are included in the trust fund must be aggregated with any contribution made by that person to the presidential committee. For individual contributors, the total may not exceed the \$1,000 limit of 2 U.S.C. 441a(a)(1)(A). Any amounts that exceed the 441a(a) limits may not be transferred and would require the amount to be transferred to be reduced to the extent of such excessive amounts. For instance, if the current trust fund balance includes contributions from the same person who contributed \$200 to the trust fund and \$900 to the presidential committee, the amount of trust funds transferred must be reduced by \$100--the amount by which that person's aggregate contribution to both the trust and the presidential committee exceeds \$1,000.

When the trust 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 presidential committee. This report may be both the initial and the termination report of the political committee. See 11 CFR 102.3. The presidential committee should report its receipt of the transfer as a miscellaneous receipt from an affiliated committee.

The Commission expresses no opinion concerning the application of any state law which may govern disposition of the trust 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, activities set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Lee Ann Elliott
Chairman for the
Federal Election Commission

Enclosures (AOs 1982-52, 1981-6 and 1981-1)