



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 13, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-27

James F. Schoener, Esquire
Miller, Canfield, Paddock and Stone
Suite 300
2555 M Street, N.W.
Washington, D.C. 20037

Dear Mr. Schoener:

This responds to your letter of April 23, 1984, as supplemented by your letter of May 22, 1984, requesting an advisory opinion on behalf of The LaRouche Campaign ("the committee") concerning application of the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031-9042 ("the Matching Payment Act"), to the refund of contributions made by credit card to the LaRouche Presidential campaign.

Your request states that a small number of contributors made contributions to The LaRouche Campaign by telephoned credit card authorization. You state that several of these contributors have requested that the committee refund their contributions in amounts up to \$250. The contributors would submit substitute contributions in the form of a check or money order that could qualify as a matchable contribution under the Matching Payment Act.

Your request refers to two categories of contributors who seek to convert their credit card contributions into matchable contributions: category (1) includes those contributors who have already reached their \$1,000 contribution limit or who might exceed the limit were they to make an substitute contribution before receiving a refund, as well as those contributors who condition making any substitute contribution on receipt of a refund of their original credit card contribution; category (2) includes those contributors whose subsequent contribution of up to \$250 would not result in the contributor exceeding the \$1,000 limit, as well as those contributors * who state that they will make the substitute contribution in the form of a matchable

* "The Commission understands that category (2) does not include any contributor whose substitute contribution would result in that person exceeding his or her \$1,000 limitation. All such contributors would fall within category (1)."

contribution with the understanding that they will immediately receive a refund of their credit card contribution in the amount now contributed by check or money order.

In the case of contributors in category (1), you State that the committee would make refunds of the amounts to be converted to matchable form before any substitute contributions are received. In the cases of contributors in category (2), the committee proposes to refund the amounts to be converted to matchable form either before the substitute contributions are received or immediately upon receipt of those subsequent contributions.

Your request also states that the LaRouche Campaign proposes to send one of two verification forms to each contributor who is converting his or her previous credit card contribution into a form of contribution that is matchable. The first such verification form (Attachment 1 of your request) would be used by contributors in category (1), and the other verification form (Attachment 2 of your request) would be used by contributors in category 2.

Both of the verification forms submitted with your request provide for verification of the original credit card contribution by the name of the credit card holder, the amount of the original contribution, and the contributor's credit card account number. The forms also provide space for the contributor to state how much of the original contribution is to be converted to a matchable form of contribution. Both forms contain language verifying that the original contribution was made from personal funds. Attachment 1 contains language stating that the contributor has already received a refund check from the committee. On Attachment 2, contributors state that it is their understanding that they will receive a refund for the amount now being converted into a form which is matchable immediately upon receipt by the committee of the contribution in check or money order form. Each verification form provides for the contributor's signature, and would accompany any submission of the new contribution for matching funds.

Your request also states that the committee plans to clearly identify all contributions involved in the proposed refund and resubmission process. The request states that at the time contributions in category (1) are submitted to the Commission for matching funds, they would be segregated from all other contributions in the same submission. At the time of submission of contributions in category (2) for matching funds, the committee will provide the Commission with (a) a printout for each contribution submitted for matching listing the following information concerning the original credit card contribution(s): the contributor's name, the amount and date of receipt of the original contribution, and the contributor's credit card number; (b) copies of the refund checks to each such contributor; (c) copies of the contributor verification forms with signature; and (d) copies of the written instruments now submitted for matching funds.

You ask whether the above-described procedure may be used by the committee to qualify contributions for matching under the Matching Payment Act.

Under 9034.2(a)(1) of Commission regulations, a matchable contribution is defined, inter alia, as a gift of money made by an individual by means of a written instrument and for the purpose of influencing the result of a primary election. Only a maximum of \$250 of the aggregate amount contributed by an individual may be matched. Under the regulations, the term "written instrument" means a check written on a personal, escrow or trust account representing or

containing the contributor's personal funds; a money order; or any similar negotiable instrument. 11 CFR 9034.2(b). Commission regulations also state that contributions which are made by persons without the necessary donative intent to make a gift, or which are made for any purpose other than to influence the result of a primary election, are not matchable. 11 CFR 9034.3(i).

The Commission concludes that in the limited context of the specific factual situation presented by your request, the proposed procedure for converting non-matchable credit card contributions into matchable contributions would be permissible, provided that all other requirements of the Matching Payment Act are met. This conclusion is conditioned on the committee's adherence to all of the procedures set forth in the request including the submission of all the proposed verifying information. The Commission also concludes that copies of both the front and back sides of all refund checks to contributors must be submitted as additional verification of the proposed procedure.

Finally, the Commission concludes that, in order to further clarify these proposed transactions, the committee's proposed verification forms must include additional language. Specifically, the following language should be added to paragraph (3) of both verification forms: "This contribution to The LaRouche Campaign, the principal campaign committee of Lyndon H. LaRouche, Jr., candidate for the Democratic nomination for President of the United States, is made with donative, intent to make a gift and is made for the purpose of influencing the result of a presidential primary election." See 11 CFR 9034.2(a)(1) and 9034.3(i).

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