



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 17, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-32

David A. Myers
Attorney-at-Law
P.O. Box 427
Elyria, OH 44036

Dear Mr. Myers:

This responds to your letter of June 26, 1984, as supplemented by your letter of August 6, 1984, requesting an advisory opinion on behalf of the Don Pease for Congress Committee concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the receipt of a contribution designated for the 1984 primary election.

You state that on April 13, 1984, the United Auto Worker's regional director notified the Don Pease for Congress Committee ("the Pease Committee") in writing that a contribution designated for the 1984 primary election would be forthcoming from the UAW's separate segregated fund. You add that on April 19, 1984, the political committee drew a check which was forwarded to an Ohio official of the committee for transmission to the Pease Committee. The Ohio primary was held on May 8, 1984. The Pease Committee received the contribution check on June 2, 1984.¹

You ask whether this contribution is attributable to the 1984 primary election or the 1984 general election for contribution limitation purposes. If it is attributable to the primary election, you ask whether it was "made" after the primary election. If it was, you further ask how to calculate "net debts outstanding" and specifically ask whether the Pease Committee must have had no cash on hand on the primary date, whether the carryover balance from the 1982 campaign

¹ The 1984 July Quarterly Report filed by the Pease Committee lists a \$4,700 contribution from the United Auto Workers Voluntary Community Action Program ("UAW V CAP") as received on June 5, 1984. Reports filed by UAW V CAP show a \$300 contribution made to the Pease Committee on October 25, 1983, as a 1984 primary election contribution. The Commission notes, however, that the report filed by the Pease Committee for this period fails to include this \$300 contribution as an itemized receipt.

must be included in the cash on hand, and whether 1983 contributions designated for the 1984 general election may be excluded from the cash on hand.

The Act provides that a multi-candidate political committee shall not make contributions "to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000." 2 U.S.C. 441a(a)(2)(A). This limitation applies separately with respect to the primary election and the general election. 2 U.S.C. 431(1)(A) and 441a(a)(6). Thus, a multi-candidate political committee may contribute in the same election cycle an aggregate of \$5,000 to a candidate with respect to the primary election and an aggregate of \$5,000 to a candidate with respect to the general election.

Commission regulations provide that when a contribution is not designated in writing for a particular election, it will be treated as made for the primary election if made before (or on) the date of the primary election, and such a contribution will be treated as made for the general election if made after the date of the primary election. 11 CFR 110.1(a)(2)(ii).² If a contribution is designated for a particular election, it is treated as made for that election. An exception exists, however, for a contribution, designated for the primary election, that is made after the date of the primary election. Such a contribution "shall be made only to the extent that the contribution does not exceed net debts outstanding from the primary election... ." 11 CFR 110.1(a)(2)(i).

The Commission notes that the subject contribution in this request was designated in writing for the 1984 primary election but that the contributor or its agents retained possession and control of the check until it was delivered to the Pease Committee after the primary election. Neither the Act nor Commission regulations define at what point a contribution is "made" for limitation purposes for primary and general elections. Such a determination must depend on the specific factual circumstances. The Commission can state only that in these factual circumstances the subject contribution could not have been "made" any earlier than June 2, 1984, when it left the control of the contributor and was received by the Pease Committee. Compare, U.S. v. Hankin, 607 F.2d 611 (3d Cir. 1979). Because this contribution was designated in writing for the primary election, it is not attributable to the 1984 general election pursuant to 11 CFR 110.1(a)(2)(ii)(B). Thus, this primary election contribution can be made by the contributor (and accepted by the Pease Committee) only to the extent that the Pease Committee had net debts outstanding from the May 8, 1984, Ohio primary election.

The regulations neither define "net debts outstanding" nor provide a method for calculating this figure. In the Commission's view "net debts outstanding," as the term itself implies, means the difference between (i) the total of the committee's debts and obligations incurred with respect to the primary election and (ii) the total of the committee's cash on hand and receivables available to pay those debts and obligations as of the date that a contribution designated for the primary election is made. See Advisory Opinion 1975-53. The determination of net debts outstanding does not require that the committee have a zero cash balance on the date of the primary election. The calculation of total debts and obligations attributable to the primary election includes primary election loans and primary election expenses incurred but not paid. In this case the calculation of total cash on hand at the time the primary election contribution is made would include those funds that the committee did, in fact, carry over from the 1982

² This provision is made applicable to multi-candidate committees by 11 CFR 110.2(a)(1).

campaign because such funds represent contributions that were undesignated with respect to the 1984 primary election and were made before that election.³ The calculation of total cash on hand, however, may exclude contributions made prior to the date of the 1984 primary election only if such contributions were designated in writing by the contributor as for the 1984 general election. Any other contributions, even if reported by the Pease Committee as for the 1984 general election, are still deemed available to pay 1984 primary debts and obligations.

If the calculation set forth above results in the Pease Committee's having net debts outstanding on the date the contribution is made, the subject contribution may be treated as made with respect to the primary election for contribution limitation purposes but only to the extent that the amount of the contribution does not exceed the amount of the net debts outstanding.⁴ If this calculation, however, does not yield a "net debts outstanding" result, the Pease Committee must either (1) return the contribution to the contributor or (2) have the contributor designate in writing that the contribution is for the 1984 general election, only to the extent that by doing so the contributor does not exceed its 441a contribution limitation for the 1984 general election.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transactions 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 1980-30, 1977-24, and 1975-53)

³ To the extent that this balance from 1982 includes contributions made after the date of the 1982 general election, these contributors must aggregate, for contribution limitation purposes, their post-election 1982 contributions with any other contribution made with respect to Mr. Pease's 1984 primary election. See Advisory Opinions 1980-30 and 1977-24.

⁴ Regarding this determination, the Commission notes that reports filed by the Pease Committee indicate that it carried over a cash balance of \$43,068 from 1982. It reported a pre- primary cash balance of \$69,107 and a June 30 cash balance of \$67,097. The Pease Committee has not reported any primary election debts. The extent to which it may exclude any of the \$51,624 in contributions it has reported as general election contributions will depend upon how many of these contributions were designated in writing by the contributor as for the 1984 general election.