



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

August 22, 1984

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-38

Pat Forcica, Campaign Manager  
Friends of Jim Oberstar  
P.O. Box 465  
Duluth, MN 55802

Dear Mr. Forcica:

This responds to your letter of August 2, 1984, requesting an advisory opinion on behalf of Friends of Jim Oberstar, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to contributions made at different times but with respect to the same office in the 1984 election cycle.

You state that the Oberstar Volunteer Committee, Representative Oberstar's original principal campaign committee for re-election to the House in 1984, transferred \$22,500 to the Oberstar Senate Exploratory Committee. You add that when Mr. Oberstar became a Senate candidate for the 1984 election cycle, the exploratory committee was terminated. A new Senate committee, Oberstar Senate '84, received \$34,877.71 from the Oberstar Volunteer Committee. Mr. Oberstar has since abandoned his Senate candidacy to again seek re-election to the House. Oberstar Senate '84 has a \$50,000 debt. You explain that the Oberstar Volunteer Committee transferred its remaining \$4,377.71 to the Senate committee and that forms to terminate this House committee have been sent to the Commission. You also state that a new House campaign committee, Friends of Jim Oberstar, has been organized.

You present three circumstances that raise your questions concerning limitations on contributions to Friends of Jim Oberstar from contributors to the Oberstar Volunteer Committee:

(1) PAC X contributed \$5,000 to the Oberstar Volunteer Committee, and this money was transferred to Oberstar Senate '84. How much money can PAC X contribute to Friends of Jim Oberstar? If it cannot contribute to Friends of Jim Oberstar, may it contribute to Oberstar Senate '84 to retire its debt?

(2) PAC Y contributed \$2,500 to the Oberstar Volunteer Committee, and this money was transferred to Oberstar Senate '84. How much can PAC Y give to Friends of Jim Oberstar?

(3) PAC Z contributed \$500 to the Oberstar Volunteer Committee, and this money was transferred to Oberstar Senate '84. PAC Z also contributed \$2,000 to Oberstar Senate '84. How much can PAC Z now contribute to Friends of Jim Oberstar?

The Commission notes that the facts you have stated do not comport with the information provided in reports filed with the Commission by the Oberstar for Congress Volunteer Committee (the original House campaign committee), Oberstar '84 Committee (the Senate exploratory committee), and Oberstar for Senate '84 (the Senate candidacy committee). These reports show transfers of \$52,500 from the House committee to the Senate exploratory committee on five separate dates: \$20,000 on June 21, 1983; \$5,000 on July 19, 1983; \$7,500 on August 16, 1983, \$10,000 on September 15, 1983; and \$10,000 on November 11, 1983.<sup>1</sup> The House Committee also transferred \$10,500 to the Senate candidacy committee on two dates: \$7,500 on May 21, 1984; and \$3,000 on June 5, 1984. The July 1984 quarterly reports (for the period ending June 30, 1984) show that the House committee had a cash balance of \$3,248 and no debts and that the Senate candidacy committee had a cash balance of \$1,508 and debts of \$49,320. The Senate exploratory committee filed its statement of organization with the Commission on July 1, 1983. The Senate candidacy committee filed its statement of organization with the Commission on November 17, 1983, as the authorized and principal campaign committee for Mr. Oberstar.<sup>2</sup> At the time the Commission received this advisory opinion request neither the original House campaign committee nor the Senate exploratory committee had been terminated. The Commission bases its responses on the information contained in these reports.<sup>3</sup>

Although most of the transfers were to the Senate exploratory committee, the "testing the waters" exemptions in Commission regulations, while initially applicable, became retroactively inapplicable because Mr. Oberstar did become a candidate for the Senate. Accordingly, transfers made from the original House campaign committee to the Senate exploratory committee are treated as if made to the Senate candidacy committee. See Advisory Opinion 1979-51. Thus, these funds became subject to the limitations, prohibitions, and requirements of the Act, including recordkeeping and reporting requirements. See 11 CFR 100.7(b)(1), 100.8(b)(1), 101.3, 102.9, and 104.3.

The Act limits individual contributions to a candidate and his authorized committee to an aggregate of \$1,000 with respect to any election for Federal office and limits multi-candidate committee contributions to an aggregate of \$5,000 with respect to any election for Federal office. 2 U.S.C. 441a(a)(1) and (2). The Act excludes from the limitations on contributions transfers of funds between the principal campaign committee of a candidate seeking nomination or election to a Federal office and the principal campaign committee of that candidate for nomination or election to another Federal office. This exemption applies only if, when the transfers are made,

---

<sup>1</sup> Reports filed by the exploratory committee, however, fail to include the receipt of the \$5,000 transfer in July 1983.

<sup>2</sup> Mr. Oberstar did not file his statement of candidacy until March 15, 1984. See 11 CFR 100.3(a) and 101.1(a). Nevertheless, he became a Senate candidate on November 17, 1983, for purposes of the Act and regulations.

<sup>3</sup> Although the facts presented in the request differ from those contained in these reports, these differences do not materially alter the questions presented in the request. Therefore, the Commission does not view this request as based on a hypothetical situation. See 11 (CFR 112.1(b).

the candidate is not actively seeking nomination or election to both offices and if the Act's limitations on contributions by persons are not exceeded by such transfers. 2 U.S.C. 441a(a)(5)(C).

Commission regulations provide that where an individual is a candidate for more than one Federal office, a separate contribution limitation applies for each election to each office. The candidate must, however, maintain separate principal campaign committees and separate accounts for each office. The candidate is also precluded from transferring or loaning funds between the separate campaign committees except as permitted by Commission regulations. See 11 CFR 110.1(f) and 110.8(d). Commission regulations permit unlimited transfers between the principal campaign committees of a person seeking more than one Federal office only if the person is not actively seeking nomination or election to more than one office<sup>4</sup> and if the limitations on contributions by persons are not exceeded by the transfer. 11 CFR 110.3(a)(2)(v).

In order to avoid contribution limitation problems, the regulation provides that "contributions making up the funds transferred shall be reviewed, beginning with the last received and working back until the amount transferred is reached." 11 CFR 110.3(a)(2)(v)(B). The regulation also provides that a "person's contribution or any portion thereof, shall be excluded if, when added to contributions already made to the transferee principal campaign committee, it causes the contributor to exceed his or her limitation." *Id.* The transferee committee must also itemize and report the original source of the contributions that make up the amount of the transfer as if such contributions had originally been made to the transferee committee and must aggregate those contributions with other contributions made to the transferee committee by the same contributors for contribution limitation purposes. See Advisory Opinions 1982-1, 1979-51, and 1978-19.<sup>5</sup> This procedure contemplates a candidate's abandoning a campaign for one Federal office and initiating a campaign for a second Federal office, but it does not contemplate such a candidate's abandoning the campaign for the second Federal office and reactivating the campaign for the first Federal office.

In this manner, a contribution to the Oberstar for Congress Volunteer Committee, the House campaign committee, that is in fact transferred to the Senate exploratory committee or the

---

<sup>4</sup> Commission regulations define the term "not actively seeking" to mean that a principal campaign committee has filed a termination report with the Commission or has notified the Commission that the candidate and his authorized committees will make no further expenditure, except in connection with the retirement of debts outstanding at the time of the notification. 11 CFR 110.3(a)(2)(v)(A). The original House candidacy committee, the Oberstar for Congress Volunteer Committee, had not at the time of this request either filed a termination report with the Commission or notified the Commission that it would make no further expenditures except to retire debts. Furthermore, Mr. Oberstar has also been a Senate candidate since November 17, 1983, and his Senate committee, at the time of this request, had not filed a termination report with the Commission or notified the Commission that it would make no further expenditures except to retire debts.

<sup>5</sup> In determining whether a particular contribution to the original House campaign committee has in fact been transferred to the Senate committee, you must use the "last-in, first-out" procedure described in 11 CFR 110.3(a)(2)(v)(B) and Advisory Opinions 1982-1, 1979-51, and 1978-19. This review must be done for each transfer, starting with the most recent one. As part of this review process, the Senate candidacy committee must amend its reports filed with the Commission to itemize the original sources of the contributions that constitute the transferred amounts (from the House committee to the Senate committees) and aggregate these contributions with other contributions to the Senate committees from the same contributors.

Senate campaign committee becomes subject to that donor's contribution limitation with respect to the Senate candidacy. Such a contribution, however, does not lose its character as a contribution to the House campaign committee and remains attributable to that donor's contribution limitation with respect to the House campaign unless the donor redesignates, in writing, that the contribution is made with respect to the Senate candidacy. Such a redesignated contribution must be aggregated with any other contributions by that contributor to the Senate candidacy for contribution limitation purposes.

Based on this discussion, and assuming that all three PACs are qualified multicandidate committees, the Commission answers your questions as follows:

(1) PAC X has contributed its maximum amount with respect to the 1984 primary election for the House and may not make any further contributions to Friends of Jim Oberstar. Also, PAC X may not contribute to Oberstar Senate '84 to retire its debt, if its \$5,000 contribution was in fact transferred to the Senate committees.

(2) PAC Y may contribute \$2,500 to Friends of Jim Oberstar so long as this contribution does not exceed an aggregate of \$5,000 contributed at any time with respect to the 1984 primary election for the House.

(3) PAC Z may contribute \$4,500 to Friends of Jim Oberstar so long as this contribution does not exceed an aggregate of \$5,000 contributed at any time with respect to the 1984 primary election for the House.

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)

Thomas E. Harris  
Vice Chairman for the  
Federal Election Commission

Enclosures (AOs 1982-1, 1979-51, and 1978-19)

P.S. Commissioner Reiche voted to approve this opinion and will file a concurring opinion at a later date.