



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 12, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-46

Rod Johnston
P.O. Box 17381
Milwaukee, WI 53217

Dear Mr. Johnston:

This responds to your letter of September 3, 1984, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the transfer of funds from your state campaign committee to your Federal campaign committee.

You state that in 1982 you were an unsuccessful candidate for Congress. You are currently seeking re-election to the state legislature in Wisconsin. You have continued your 1982 Federal campaign committee, the Johnston for Congress Committee, primarily because it has outstanding debts and obligations. You wish to transfer funds from your state campaign committee to your Federal campaign committee for the purpose of retiring these debts and obligations.¹ You state that state campaign committee funds were contributed with the intent that they would be used by the state committee.

Although the Commission concludes that the Act does not prohibit such a transfer, it would carry certain consequences and impose certain obligations on both committees, depending on the amount of funds transferred. See Advisory Opinions 1984-3, 1983-34, 1982-52, and 1980-117.

Initially, the Commission notes that a transfer of funds from your state campaign committee to your Federal campaign 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

¹ Reports filed with the Commission by your Federal committee disclose outstanding debts and obligations of \$26,125.23. This total includes \$17,900 in loans you made to your committee and \$7,225.23 in unreimbursed campaign travel expenses made personally by you. Compare 11 CFR 106.3(b)(1) and Advisory Opinion 1984-8.

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). Thus, both your state committee and your Federal committee are controlled by the same person for campaign-related purposes so that the state committee would be deemed affiliated with the Federal 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 state committee is a "political committee" as defined at 11 CFR 100.5. See 11 CFR 102.6(a). Accordingly, if the state committee transfers more than \$1,000 to the Federal committee in a given calendar year, the state committee 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 1982-52. The state committee 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 state committee. It 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 state committee would also be required to exclude any contributions not permissible under the Act from those funds proposed to be transferred to the Federal committee. See 2 U.S.C. 441a, 441b, 441c, and 441e; 11 CFR 104.12; Advisory Opinions 1984-3 and 1982-52. This means that direct or indirect contributions from corporations, labor organizations, and government contractors, as well as national banks 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 Federal committee and since the state committee upon becoming a political committee under the Act also becomes affiliated with the Federal committee, the contribution limits of 2 U.S.C. 441a(a) apply to the contributors of the funds held by the state committee. Accordingly, the contributions of any person that are included in the state committee's funds must be aggregated with any contribution made by that person to the Federal committee. For election limit of 2 U.S.C. 441a(a)(1)(A). For multi-candidate committees, the total may not exceed the \$5,000 per election limit of 2 U.S.C. 441a(a)(2)(A). Any portion of a contributor's contribution that exceeds the 441a(a) limits may not be transferred. Instead the amount to be transferred must be reduced to the extent of such excessive amount. For instance, if the same person contributed \$200 to the state committee and \$900 to the Federal committee for the 1982 general election, the amount of state committee funds transferred

must be reduced by \$100, the amount by which that person's aggregate contribution to both committees exceeds \$1,000.²

When the state committee 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 Federal committee. This report may be both the initial and the termination report of the state committee as a Federal political committee. See 11 CFR 102.3. The Federal 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 state campaign committee's funds in the manner described in this request, since the Act does not supersede or preempt such a question. See Advisory Opinion 1978-37. Also, the Commission expresses no opinion concerning any Federal or state tax ramifications since such questions are outside the Commission's 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 1984-31, 1984-8, 1984-3, 1983-34, 1982-52, 1980-117 and 1978-37)

² Although you state that state campaign committee funds were contributed with the intent that they would be used by the state committee, the Commission has not required compliance with the requirements of 11 CFR 102.5(a)(2) for transfers from a state committee to a Federal committee of the same individual who has been both a Federal and a state candidate. Compare Advisory Opinions 1984-3, 1983-34, 1982-52, and 1980-117 with Advisory Opinion 1984-31. The Commission notes that under Wisconsin law, funds contributed to a state campaign committee may be used for the purpose of making expenditures in connection with a campaign for national office. See 1983 Wis. Stat. §11.25(2)(b).