



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

October 18, 1984

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-47

Peter A. Peyser  
Sunnyside Lane  
Irvington, NY 10533

Dear Mr. Peyser:

This responds to your letter of August 28, 1984 as supplemented by your letter of September 14, 1984, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971 as amended ("the Act") and Commission regulations to your proposed use of excess campaign funds for personal purposes.

The Commission understands that you are a former Member of Congress, having been first elected in 1970, and that you were in office on January 8, 1980. Your letter of September 14, 1984 indicates that you believe you have excess campaign funds remaining from an unsuccessful primary campaign in 1984. You ask whether you may use these funds for personal use as an individual who was a Member of Congress on January 8, 1980, notwithstanding the fact that you have since left office.

The Act, as amended in 1979, provides that amounts contributed to a candidate for campaign purposes may be used for other specified purposes, but may not be converted to personal use. However, this prohibition as to personal use does not apply with respect to any individual who was a Member of Congress on January 8, 1980. 2 U.S.C. 439a; see 11 CFR 113.2(d) and 113.1(e). The Commission has held that where an individual was a Member of Congress on January 8, 1980, and then left office, his campaign committee could give him \$70,000 remaining from excess campaign funds for his personal use. Advisory Opinion 1982-33. The Commission has also held that where a Member of Congress who sought reelection was incapacitated by a heart attack and the seat was declared vacant, it was permissible for her campaign committee to donate excess campaign funds to her for January 8, 1980. Advisory Opinion 1981-15.

The Commission notes that you were a Member of Congress on January 8, 1980, and are therefore a member of the class of individuals that is not subject to the statutory prohibition in

2 U.S.C. 439a. Because 439a does not require continuous membership in Congress as a condition for inclusion in the excepted class, the fact that you are no longer a Member of Congress is not relevant. In addition, 439a makes no reference to the period of time when campaign funds are received as a further qualification on the class of individuals who are not subject to the general rule of prohibition. Thus, the Commission concludes that 2 U.S.C. 439a does not prohibit your use of excess campaign funds for personal purposes.

The Commission expresses no opinion regarding possible tax consequences of your proposed transaction because those issues are outside the Commission's jurisdiction.

This response constitutes an advisory opinion concerning application of the Act, and 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

Enclosures (AOs 1982-33 and 1981-15)