



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 30, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-52

The Honorable Marty Russo
United States House of Representatives
2457 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Russo:

This responds to your letters of September 12 and September 20, 1984, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to contributions that may have been unlawfully given to your campaign committee in the 1982 election cycle.

You state that on the basis of information that developed in a grand jury investigation, as well as information that came to your attention through an article in the September 11, 1984, edition of the Chicago Sun-Times, you have determined that your campaign committee, among others, received campaign contributions in 1982 which, while ostensibly from personal funds of corporate employees, were in fact funded by the corporation through employee bonuses. The Criminal Information filed in this case charges that the Board of Trade Clearing Corporation, located in Chicago, made contributions from corporate funds to several Federal candidates totalling over \$30,000 and that \$7,750 of this amount was contributed to your campaign committee between December 1981 and September 1982. The Commission has been informed by the United States Department of Justice that the Clearing Corporation entered a plea of guilty to criminal violations of 2 U.S.C. 441b and that with the guilty plea, as well as guilty pleas of two corporate officers, the criminal prosecution of the cases has been concluded. No criminal charges were filed against you or your campaign personnel; nor were any such charges filed against the other candidates or their campaign personnel.

In light of these facts, you ask for an opinion regarding the proper disposition of these funds. Your request presents several questions for Commission review:

(1) Whether, through your authorized campaign committee, you are required to refund amounts unlawfully given by the corporation?

(2) If such refunds are required, should they be made immediately or should an amount equal to the unlawful contributions be set aside in an escrow account for payment after findings of fact and conclusions of law are made with respect to the conduct of all parties in this matter?

(3) Assuming immediate refunds are required to be made, should they be paid to the individuals who were the ostensible donors, or rather to the corporation that apparently provided the funds to them (as employees) in the form of reimbursements or bonuses?

As you know the Act prohibits the making of a corporate contribution and also makes it unlawful "for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by" 2 U.S.C. 441b(a). See 11 CFR 114.2(c). You indicate your lack of knowledge of the corporate source of these 1982 contributions until the findings of the grand jury investigation were disclosed. Accordingly, the Commission considers this opinion as limited to issues that arise with respect to application of the Act and Commission regulations given your factual representations that you and your committee have only recently acquired knowledge as to the nature of the contributions in question.¹

With respect to the acceptance and retention of contributions that appear to be unlawful under the Act, Commission regulations require that such contributions when received by a candidate or committee be either returned within 10 days, or deposited for further review with a refund within a "reasonable" time if the contribution "cannot be determined to be legal." 11 CFR 103.3(b). This regulation also states that the treasurer shall make his or her best efforts to determine the legality of the contribution. The mandatory refund requirement of this regulation, together with the duty to make "best efforts" to determine the legality of the contribution, reflect the Commission's view that as a general rule contributions prohibited by the Act shall be returned by the recipient once their unlawful nature is discovered.

This general rule while not expressly set forth in the cited regulation, nevertheless undergirds that regulation and is derived from the Act itself. For example, the Act bars the acceptance of an excessive contribution. 2 U.S.C. 441a(f). Similarly, it prohibits acceptance of contributions made by national banks, corporations, labor organizations, government contractors, and foreign nationals. See 2 U.S.C. 441b, 441c, 441e. While there are situations where

¹ The Commission notes that it is not reaching any conclusions of law or making any finding of fact in this opinion with respect to the circumstances in which the original contributions were made by the corporation and received by your committee or any other person. Such an analysis and review would only be appropriate pursuant to the enforcement process and procedures. See 2 U.S.C. 437g and 11 CFR Part 111.

contributions are accepted without any knowledge, or reason to know, of the unlawful nature of the contribution at the time of receipt, it does not follow that when the recipient acquires later information revealing the unlawful nature of the contribution, he or she is excused from the duty to refund such a contribution.

The Commission in prior opinions has said that refunds were required where facts discovered after the initial acceptance revealed that the contributions were prohibited by the Act. In Advisory Opinion 1980-37 a contribution received from a Government contractor was required to be refunded where the candidate had reviewed his records and asked the Commission for an opinion on the Government contractor status of the contributor. Similarly, the Commission said that a refund was required where an excessive contribution would otherwise result. Advisory Opinion 1977-40. In an opinion concerning contributions made to candidates by a labor organization's separate segregated fund (PAC) that used an unlawful system (the reverse checkoff) to collect involuntary funds from members, the Commission said that refunds by the candidates who received PAC contributions were not required. Advisory Opinion 1978-53. The contributions in that opinion had not been made from the treasury funds of the labor organization and thus were not unlawful in that respect. In this case, however, the contributions were made from corporate funds and not from funds contributed (properly or improperly) to a PAC.

The foregoing discussion explains and illustrates application of the general principle requiring donee refunds of unlawful contributions upon discovery of their illegality. The Commission recognizes, however, that in particular circumstances there may be mitigating factors of equity, impossibility, or extraordinary lapses of time, that would justify case by case exceptions to the stated general rule. From the information provided to the Commission in this situation, there do not appear to be any such mitigating factors.

The Commission responds to the specific questions stated above to the effect that amounts equal to the unlawful contributions received by your committee are required to be returned. In response to questions two and three, the refunds should be made immediately upon receiving this opinion and should be disclosed in the next report required to be filed by your committee.² The refunds should be made to the corporation that was the source--the Board of Trade Clearing Corporation.

For purposes of this opinion, the Criminal Information and the guilty plea of the corporation to the charges therein constitute an adequate factual basis for concluding that the corporation should receive the refunds. According to the Information, the employees were not the actual sources of the contributions since the corporation paid them additional salary amounts to cover for the funds they initially "contributed" from their personal checking accounts. Given the corporate payments received by the employees to make them whole for their initial "contributions" to the candidates, the employees' personal funds were not reduced as a result of this scheme. Accordingly, they should not receive refunds from your committee.

² Commission regulations provide that contribution refunds shall be itemized with identification of the person who receives the refund. 11 CFR 104.3(b)(4)(v). Although not required, your committee may identify the individuals in whose names these corporate contributions were originally made. Amendments to prior reports are not necessary with respect to the refund.

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

ADDENDUM Commissioner Aikens voted against approval of this opinion and will file a dissenting opinion at a later date.