



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

March 6, 1985

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-5

Honorable Joe Kolter  
P.O. Box 2  
Beaver Falls, PA 15010

Dear Representative Kolter:

This responds to your letter of December 3, 1984, as supplemented by your letter of January 14, 1985, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the attribution of contributions received in 1984 by your principal campaign committee, the Committee to Re-elect Joe Kolter.

You state that a representative of the United Auto Workers Voluntary Community Action Program ("UAW V CAP") called you prior to the Pennsylvania primary election (held on April 10, 1984) to notify you of a \$5,000 primary election contribution and to arrange a meeting for delivery of the check. You state that the meeting did not take place; thus, the contributor mailed the check (dated April 6, 1984). You state that the check was received after the primary but credited toward that election.<sup>1</sup>

You further state that a similar sequence of events occurred at the time of the general election (held on November 6, 1984). You state that your campaign received and deposited a \$200 check (dated October 16, 1984) from the same contributor on or before the general election. Before the general election, your campaign received a call from this contributor, who notified you of an additional \$4,800 contribution for the general election. Your campaign and the contributor again unsuccessfully attempted to arrange a meeting. You state that the check (dated October 29, 1984) was mailed before the election but received and deposited the day after the election.<sup>2</sup> You have also provided a letter from the contributor (dated December 7, 1984), in which its regional representative stated that the \$5,000 and the \$4,800 checks were "delivered late" and added that

"for the record," the \$5,000 check was for the primary election and the \$4,800 check was for the general election.

Regarding these contributions, you present your question as follows: The campaign is going to continue to solicit the UAW V CAP for the 1986 election, so I would like to ask for this advisory opinion to justify our reporting them as [1984] primary and general contributions."

Commission regulations require that a written advisory opinion request "set forth a specific transaction or activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future." 11 CFR 112.1(b). To the extent that your letter presents questions concerning contribution limits and the reporting of the \$3,000 and \$200 contributions (on checks dated April 6 and October 16 respectively), it relates to past, not prospective, activity. As such, it does not qualify as an advisory opinion request. See 11 CFR 112.1(b). Your letter, however, also presents a question whether the \$4,800 contribution should be charged against the contributor's limitation with respect to the 1984 general election or the 1986 primary election. The correct attribution of the contribution directly relates to your campaign's proposed solicitation of contributions from UAW V CAP for the 1986 election. Accordingly, this portion of your inquiry concerns prospective activity and qualifies as an advisory opinion request.

With respect to your committee's financial position at the time the \$4,800 contribution was received, the Commission notes that your principal campaign committee has not reported any outstanding debts or obligations on its pre-general election, post-general election, and year-end reports. It reported a cash-on-hand-balance of \$35,469 on October 17, 1984. For the period from October 18, 1984, through December 31, 1984, your committee reported total expenditures of \$40,791. In the same period it also reported additional contributions of \$37,980, of which more than \$20,000 was reported as received on or before November 6, 1984. As this information indicates, on the date your campaign received the \$4,800 contribution it had at least \$14,678 more than was needed to cover all expenditures made through the close of December 31, 1984.<sup>3</sup> Your committee also reported a cash-on-hand balance of \$33,640 on December 31, 1984.

The Act and regulations limit a multi-candidate committee's contributions to a Federal candidate and his authorized committees to an aggregate of \$5,000 with respect to any election for Federal office. 2 U.S.C. 441a(a)(2); 11 CFR 110.2(a) and (d). The Act and regulations also prohibit a candidate from accepting contributions in excess of such limits. 2 U.S.C. 441a(f); 11 CFR 110.9(a).

The Commission has previously addressed the application of the contribution limits in surplus fund situations similar to that presented in your request. In Advisory Opinion 1977-24, regarding the transfer of surplus funds from a candidate's 1976 committee to his 1978 committee, the Commission stated:

... to avoid application of the 1978 limits to each contribution comprising the transferred surplus, all funds transferred must have been received as of the date of the 1976 general election (rather than subsequent to that election) since, except to the extent of outstanding debts from a 1976 election, each "contribution" (as defined in 2 U.S.C. 431(e)) after the date of the general election in 1976 is

charged against the contribution limits of the original contributor with respect to a future election.

Relying on this advisory opinion, the Commission further explained in Advisory Opinion 1978-37, regarding the transfer of surplus funds from a candidate's 1978 primary election campaign to repay outstanding debts from his 1976 general election campaign:

... However, the transfer of residual contributions made to a candidate in 1978 would not constitute a contribution to the 1976 Committee so long as the contributions were originally made to influence Mr. Caputo's 1978 election to Federal office and were received before the date on which Mr. Caputo ceased to be a candidate for Federal office in 1978 and had sufficient funds to retire 1978 campaign debts.

In a previous opinion the Commission determined that excess funds of a 1976 campaign committee could be transferred forward to the 1978 campaign committee of the same individual without application to those funds of the 1978 limits so long as all funds transferred were received prior to the date of the 1976 general election, the date on which that individual ceased to be a candidate for Federal office in 1976. See AO 1977-24, copy enclosed. The Commission believes that similar restrictions would apply to the transfer of excess funds from the 1978 Committee to the 1976 Committee. Thus the transfer of excess campaign funds from the 1978 Committee, following the retirement of its debts and obligations, to the 1976 Committee would not necessitate any designation of particular contributions as being used for particular 1978 Committee expenses, since those contributions comprising the amount transferred to the 1976 Committee would not be subject to the contribution limits of 2 U.S.C. 441a with respect to the 1976 general election.

However, contributions to the 1978 Committee received after the date on which Mr. Caputo ceased to be a candidate for Federal office in 1978 (and had sufficient funds on hand to retire 1978 campaign debts) may not be regarded as made with respect to his 1978 candidacy for Federal office. Rather, they should be treated as contributions made for the purpose of retiring the debts of the 1976 Committee to the extent such debts are outstanding. They would therefore be subject to the contribution limits of 2 U.S.C. 441a with respect to the 1976 general election.

See also Advisory Opinions 1981-9, 1980-143, and 1980-32.

In Advisory Opinion 1982-39, the Commission noted that "the entire amount of the transfer is comprised of funds received by the 1980 Committee prior to the date of the November 4, 1980 general election" and stated:

[t]he Commission has held that funds received by a candidate prior to the date of a previous election are not counted against an individual's contribution limits with respect to a future election in the event that the candidate transfers excess funds

from a previous campaign committee to a currently registered campaign committee.

Recently, in Advisory Opinion 1984-32, the Commission noted that funds available to pay 1984 primary election debts would include any surplus funds carried over from the 1982 election cycle and that post-general election 1982 contributions included in such carried over funds would be chargeable against the original contributors' limitations with respect to the 1984 primary election. See also Advisory Opinions 1980-60 and 1980-30.

This review of the previous advisory opinions leads to the conclusion that a similar response should be made to your question. The Commission notes that your committee could continue to receive contributions after the 1984 general election, such as the \$4,800 contribution from UAW V CAP. Nevertheless, since your committee has no apparent debts outstanding with respect to the 1984 general election, the \$4,800 contribution may not be applied toward UAW V CAP's limitation with respect to that election. Accordingly, the \$4,800 contribution should be regarded as a contribution with respect to the 1986 primary election and aggregated with other contributions from UAW V CAP with respect to such election for limitation purposes. This treatment may also apply to other contributions your committee received after November 6, 1984. Also, if these contributions aggregate in excess of \$5,000, you may also meet the requirements for candidacy status for the 1986 election cycle. See 11 CFR 100.3 and 101.1; Advisory Opinion 1977-29.

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. 2 U.S.C. 437f.

Sincerely yours,

(signed)

John Warren McGarry  
Chairman for the Federal Election Commission

Enclosures (AOs 1984-32, 1982-39, 1981-9, 1980-143, 1980-60, 1980-32, 1980-30, 1978-37, 1977-29, and 1977-24)

Commissioner Harris voted to approve this opinion but will file a concurring opinion at a later date.

1. Your committee's report of this contribution itemizes the date as April 6, 1984. Pursuant to Commission regulations, the recipient committee reports the date of the receipt of a contribution. See 11 CFR 104.3(a)(4)(ii).
2. Your committee's report of the \$4,800 contribution itemizes the date as November 16, 1984. See 11 CFR 104.3(a)(4)(ii).

3. \$35,469 plus \$20,000 minus \$40,791 equals \$14,678.