



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 7, 1985

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-8

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 January 25, 1985 and December 20, 1984, requesting an advisory opinion to clarify the duties of the Russo for Congress Committee, regarding the refund of certain contributions that were received in 1981 and 1982.

In Advisory Opinion 1984-52, the Commission addressed the facts and issues that represent the background of this request. The Commission concluded that \$7,750 in contributions to your 1982 Congressional campaign that were made from the treasury funds of a corporation were required to be refunded. The Commission also stated that refunds:

"should be made immediately upon receiving this opinion and should be disclosed in the next report required to be filed by your committee."

The opinion was issued on November 30, 1984, and received by your office on December 6, 1984.

In this request, you explain that your committee is not able to make refunds at the present time because of "its need to pay current bills out of cash on hand." You also provided a copy of your committee's year-end report for 1984. It discloses a cash-on-hand balance of \$6,855 on December 31, 1984, and outstanding debts and obligations of \$8,510. The amount of outstanding debts and obligations disclosed in your committee's year-end report does not include the \$7,750 in refunds required by Advisory Opinion 1984-52.

You state that your committee plans two fundraising events this year. One event will be in Washington on April 16, 1985, at which you expect to net approximately \$30,000 in contributions. The other event will be in your district in the fall, at which you expect to net approximately \$50,000 in contributions. You state that your committee does not plan any other fundraising activities for this year. You also state that during the first six months of 1985 your committee should receive approximately \$5,000 in unsolicited contributions and make approximately \$10,000 in expenditures.

You ask whether the statement in Advisory Opinion 1984-52 that the refunds should be made "immediately" may be construed to mean within six months of the date of the opinion.

Your committee in its post-general election report disclosed a cash-on-hand balance of \$11,900 and outstanding debts of \$11,381. According to your committee's year-end report, this cash-on-hand balance had declined to \$6,855 by December 31, 1984, with outstanding debts of \$8,510. Most of the expenditures disclosed in your committee's year-end report appear to relate to the 1984 general election. In light of these circumstances, including the anticipated fundraising event on April 16, 1985, the Commission concludes that the required refunds will be timely if made within a reasonable time after that event. See 11 CFR 103.3(b)(2). However, if before April 16, your committee receives funds sufficient to retire its debts (as reported on its year end report for 1984), the Commission would expect that refund payments in accordance with its prior opinion would begin at that time. Cf. 103.3(b)(2).

Your committee should report and itemize the refunds on its next report filed with the Commission after the refund. See 11 CFR 104.3(b)(4)(v) and 104.5(a)(2)(A). The Commission notes that these refunds became an obligation owed by your committee with the issuance of Advisory Opinion 1984-52. Since the refunds were not reported as made in your year-end report, they remained an outstanding obligation on December 31, 1984. Accordingly, your committee should amend its year-end report (including Schedule D) to disclose this outstanding obligation. See 11 CFR 104.3(d) and 104.11.

The Commission also notes that if contributors designate their contributions for the purpose of paying these refunds, the contributors' limitations with respect to the 1982 general election would apply. See 11 CFR 110.1(g)(2); Advisory Opinion 1981-22. Such designations must be made by the contributor, in writing, contemporaneously with the making of the contribution, and submitted to your committee. See 11 CFR 110.1(a)(2). If, however, the contributors make contributions to your current campaign committee but do not designate the contributions for such purpose, the contributors' limitations with respect to 1986 would apply, even though your committee uses such contributions to refund contributions originally made to your 1982 campaign. See Advisory Opinion 1980-32.

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)

John Warren McGarry
Chairman for the Federal Election Commission

Enclsoures (AOs 1984-52, 1981-22, and 1980-32)