



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 9, 1985

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-13

Gwen Tillemans, Chairman
Committee to Re-Elect Congressman Lagomarsino
P.O. Box 23
Santa Barbara, California 93102

Dear Ms. Tillemans:

This responds to your letter of March 27, 1985, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the bylaws of the Committee to Re-Elect Congressman Lagomarsino ("the Committee"), the principal campaign committee of Representative Robert J. Lagomarsino.

You state that the Committee's bylaws provide that, in the event Mr. Lagomarsino is or becomes unable to serve or to stand for re-election, for any reason, the Committee would be used to encourage another Republican candidate to run for the seat, and to endorse and otherwise assist any such candidate in both a primary and a general election campaign. Any funds then remaining in the Committee's treasury would be used for any of these purposes. You ask whether all such excess funds may be transferred to the succeeding campaign committee, and whether the Committee's bylaws providing for such a transfer comply with the Act and Commission regulations.*

The Commission concludes that the Committee may not make unlimited transfers of its excess campaign funds to a new principal campaign committee established to support a succeeding Republican candidate in Mr. Lagomarsino's district. It may, however, make a limited contribution to such a committee and to any existing multicandidate political committee. It may also make unlimited contributions to any political party committee.

Under the Act, "excess campaign funds" are defined as amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures. 2 U.S.C. 439a and 11 CFR 113.1(e). Such funds may be used for any

lawful purpose, including transfers without limitation to any national, State, or local committee of a political party. 2 U.S.C. 439a and 11 CFR 113.2. Because the proposed committee to support a successor to Mr. Lagomarsino would not qualify as a "party committee", it could not receive an unlimited transfer from the Committee. See 11 CFR 100.5(e)(4), 100.14, and 100.15.

Furthermore, since the Committee is a "person" as defined by 2 U.S.C. 431(11), any transfers of funds it makes to a nonparty political committee, including the proposed successor committee, would be contributions and thus would be subject to the Act's contribution limitations. See 2 U.S.C. 441a(a)(1) and 11 CFR 110.1. See also Advisory Opinion 1981-15, copy enclosed. Thus, the Committee could contribute up to \$1,000 per election to a committee authorized by another candidate.

The Commission also notes that the Committee may, under the Act, convert its status to that of a multicandidate committee. See Advisory Opinions 1983-14, 1982-32 and 1978-86; see also 2 U.S.C. 441a(a)(4) and 11 CFR 100.5(e)(3). Under the Act, the term "multicandidate political committee" means a political committee which has been registered under 2 U.S.C. 433 for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office. If the Committee were to qualify as a multicandidate committee, it would be permitted to contribute \$5,000 per election to a candidate seeking to succeed Mr. Lagomarsino. 2 U.S.C. 441a(a)(2)(A).

Finally, it should be noted that the Committee's bylaws setting forth the manner in which excess campaign funds will be used do not, in and of themselves, violate the Act or Commission regulations. Rather, it is activity undertaken pursuant to these bylaws that is prohibited.

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

Enclosures (AOs 1983-14, 1982-32, 1981-15, 1978-86)

*/ The Committee's bylaws suggest the possibility that the Committee may simply be transformed into the principal campaign committee of a succeeding candidate, should Mr. Lagomarsino not seek re-election. The Commission notes that such result would be prohibited by 11 CFR 102.12(b), which states that no political committee may be designated as the principal campaign committee of more than one candidate.