



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 30, 1985

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-25

James R. Staff, Treasurer
Steve Bartlett Congressional Campaign Committee
P.O. Box 679011
Dallas, Texas 75364

Dear Mr. Staff:

This responds to your letter of August 8, 1985, requesting an advisory opinion on behalf of the Steve Bartlett Congressional Campaign Committee ("SBCCC") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to SBCCC's proposal to reattribute apparent excessive contributions to the contributor's spouse.

You state that in May of this year SBCCC held a Memorial Day picnic fundraiser. The tickets were sold for \$10 each and proceeds recorded as contributions to SBCCC. Since the picnic, SBCCC has received contributions from some individuals, which when added to the cost of the tickets purchased for the picnic, places their total contributions in excess of the \$1,000 limit. You further state that SBCCC has been refunding the excessive amount. As an alternative to making immediate refunds in future cases, you propose that a letter and accompanying donor authorization form be sent to the original contributor. By using this procedure you expect that a portion of the excessive contribution(s) may be attributed to the original contributor's spouse.

The letter which you propose to send itemizes the contributions; informs the contributor of "the FEC limitation;" and that his/her contributions exceed the limit. It also notifies the contributor of a separate limit for his/her spouse and that a portion of the previous contribution may be attributed to the spouse, if both agree. A form will be enclosed for facilitating the reattribution. The form allows the contributors to list each contribution by date, amount, contributor, and election. Both spouses' signatures are required on your proposed form.

You propose to send these letters and the authorization form where it appears that SBCCC has received contributions from married individuals who have not attributed any portion to the

spouse who did not sign either the contribution check or another writing with respect to the contribution. If the reattribution form is returned with signatures of both spouses designating their respective shares of the previous contribution(s), you propose to retain the contributions and attribute them to each spouse pursuant to the signed form, provided the contributions are otherwise within the limits of the Act.

Commission regulations and prior opinions have long recognized that both spouses may contribute \$1,000 to the same candidate for the same election regardless of whether such spouses are from a single income family. 11 CFR 110.1(i)(1) and Advisory Opinion 1975-31. However, the regulations require a contribution which represents contributions from more than one individual to indicate on the written instrument itself, or on an accompanying written statement signed by all contributors, the amount to be attributed to each contributor. 11 CFR 104.8(d). In Advisory Opinion 1980-67, the Commission concluded that contributions from a husband and wife must also conform to this rule. Thus, for any contribution made by one instrument to be considered a contribution by both a husband and wife, both must sign the instrument or an accompanying written document specifying that each is a contributor and the amount to be attributed to each. See Advisory Opinions 1980-67 and 1980-11; 11 CFR 100.7(c). Absent this documentation, a contribution is attributed to the last person signing the instrument. 11 CFR 104.8(c).

Commission regulations at 11 CFR 103.3 set forth procedures for the deposit and review of contributions that are received by a political committee. Under 103.3(b)(1) the treasurer is required to use his or her best efforts to determine the legality of the contribution. The Commission has indicated in previous advisory opinions that this regulation allows the conditional acceptance and deposit of contributions of "questionable legality" but that "best efforts" must be used to ascertain the legality of such a contribution; moreover, a refund is mandatory if the contribution cannot be determined to be legal within a "reasonable time" after its receipt. See Advisory Opinions 1984-52 and 1977-9. The Commission has also stated in a recent opinion presenting different but somewhat analogous facts, that a donor's redesignation of a primary election contribution as a general election contribution would be permissible (if otherwise lawful) without the necessity of making a refund to the donor. See Advisory Opinion 1984-32.

The Commission concludes that the situation presented in your request is subject to the procedures set forth in its regulations at 11 CFR 103.3(b). To the extent SBCCC receives a contribution from a married individual that is not initially attributable to the other spouse and that exceeds the \$1,000 limit of the donor spouse, that contribution is excessive and accordingly appears to be illegal. The issue thus presented is whether your proposal, as described above, conforms to the cited regulatory procedure for handling apparent illegal contributions.

Your proposed letter and the donor authorization form, which requires both spouses' signatures in order to validate their intended allocation of a joint contribution, will satisfy the requirements of Commission regulations applicable to contributions by married individuals, and to contributions from more than one person using the same check (or instrument). 11 CFR 100.7(c), 104.8(d), 110.1(i)(1). However, in order to maintain compliance with contribution limitations, and to prevent this procedure from being used as a means to circumvent those limitations, the

Commission's approval of your procedure is conditioned on all of the following: (1) the reattribution process may only be used in those instances where the total contributions, if made by both spouses, would not exceed \$2,000 per election; (2) before using the letter and form in any given case the treasurer must have a reasonable basis¹ to conclude that the contribution was likely to have been made by a married couple; and (3) the letter to the contributor should be revised to inform the contributor of the statutory \$1,000 limit per election and of his/her alternative to receive a refund of the excessive amount instead of attributing it to both spouses.

Additionally, Commission regulations require that contributions which cannot be determined to be legal must be refunded "within a reasonable time." 11 CFR 103.3(b)(2). The regulations do not define the phrase "within a reasonable time." In the circumstances presented in this opinion, and where a signed donor authorization is not received by SBCCC in such period, the Commission will presume that a refund is made within a reasonable time if made within 30 days after the date of SBCCC's receipt of the excessive contribution.² In those instances where the contributor requests a refund, SBCCC is required to make the refund promptly. Any refund made within 10 days of the receipt of the donor's request will be presumed to have been made promptly. See 11 CFR 103.3(b)(1). All deposits and refunds by SBCCC of the questionable contributions should be duly reported to the Commission. See 11 CFR 103.3(b)(2); also see generally 2 U.S.C. 434(b). Moreover, written contemporaneous records shall be retained to document the relevant names, dates, and other details for all requests for donor authorization statements and the disposition of each. 11 CFR 103.3(b)(1), 104.14(b).

This response constitutes an advisory opinion concerning application of the Act and Commission regulations 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 1975-31, 1977-9, 1980-11, 1980-67, 1984-32, 1984-52)

1. Examples of reasonable basis are: a contribution by check that is imprinted with both spouses' names as account holders; a contribution by check (or other negotiable instrument) that has a signature by only one spouse but includes an unsigned notation (on the instrument or in an accompanying document) suggesting that both spouses may have intended to contribute jointly.

2. In a closed enforcement case, MUR 1360, the Commission considered excessive contributions from 259 individuals that totaled approximately \$100,400 and decided not to pursue violations of the limits in those cases where refunds were made to contributors within a month of the receipt of the excessive contributions. See General Counsel Report dated September 14, 1981, page 3.