



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 23, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-8

Jan W. Baran, Esquire
Wiley and Rein
1776 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Baran:

This responds to your letter of February 13, 1986, as supplemented by your letters of March 19, and April 14, 1986, requesting an advisory opinion on behalf of James D. Santini concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to refunds of 1982 contributions to Mr. Santini by his proposed 1986 principal campaign committee.

Your letter states that Mr. Santini may become a candidate for the United States Senate in the 1986 election cycle. At that time he proposes to make refunds to certain contributors who gave to his 1982 Senate campaign. You explain that his 1982 principal campaign committee attempted to make refunds to certain 1982 campaign donors before that committee terminated in 1983. However, refund checks sent to 17 contributors, and totalling \$15,200, were either not cashed or were not received by them. The refunds made by the 1982 committee, Santini for Senate, were for contributions made with respect to the 1982 general election.¹ You ask if Mr. Santini's 1986 principal campaign committee may make the proposed refunds to the seventeen 1982 general election contributors.

As a preliminary matter, the Commission notes that this opinion will only consider the question of whether the refunding of 1982 contributions by the 1986 principal campaign committee is permissible under the Act and regulations. Any related issues which may arise concerning the activity of the 1982 principal campaign committee are not addressed herein. Such

¹ Santini for Senate was required to refund the general election contributions after Mr. Santini lost the 1982 Nevada Democratic primary election. See Advisory Opinions 1985-41, 1982-49, 1980-122, and 1980-68.

questions relate only to past conduct and are not prospective. Accordingly, they are not appropriate for the advisory opinion process. 2 U.S.C. 437f and 11 CFR 112.1(b).

The Commission has concluded that the Act and regulations permit candidates and their principal campaign committees to make their own determinations as to the types of expenditures that will most effectively influence their nominations or elections. See Advisory opinion 1985-42 and opinions cited therein. The Act provides that excess campaign funds may be expended for any "lawful purpose," but may not be "converted by any person to any personal use. . . ." ² 2 U.S.C. 439a, 11 CFR 113.2. The Commission has previously concluded that making refunds of previous contributions is a lawful purpose.

In Advisory Opinion 1976-6, the Commission concluded that the funds of a principal campaign committee for the 1978 election cycle could be used to refund certain corporate contributions made in 1972 to the same candidate for a past election. Furthermore, in the circumstances presented in Advisory Opinion 1984-52, the Commission required that refunds of corporate contributions made in a prior election cycle be made from campaign contributions received by the same candidate in a subsequent election cycle. See also Advisory Opinion 1985-8. Thus, the Commission concludes that the 1986 Santini committee may make the proposed refunds.

The refunds should be reported by the 1986 Santini committee as expenditures in accordance with 2 U.S.C. 434(b) and 11 CFR 104.3(b). See, in particular, 11 CFR 104.3(b)(4)(v) which requires itemized disclosure of contribution refunds.

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)

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures (AOs 1985-42, 1985-41, 1985-8, 1984-52, 1982-49, 1980-122, 1980-68, ~~1980-32~~, 1976-6)

² This prohibition on conversion to personal use does not apply to Mr. Santini since he was a Representative in Congress on January 8, 1980. See Advisory Opinion 1984-47.