



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 12, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-12

Geraldine A. Ferraro
108-18 Queens Boulevard
Forest Hills, NY 11375

Dear Ms. Ferraro:

This responds to your letter of February 25, 1986, as supplemented by your letter of March 25, 1986, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the transfer of funds from the Ferraro for Congress 1984 Committee ("1984 Committee") to the Ferraro '86 Exploratory Committee ("Exploratory Committee").

Your initial letter states that the Exploratory Committee, a non-filing committee, was organized to "study the viability of" your possible 1986 U.S. Senate candidacy in New York. You decided not to become a 1986 Senate candidate, but the Exploratory Committee has outstanding bills from its activity on your behalf. You propose to pay these bills with funds remaining in the account of the 1984 Committee.

Your subsequent letter of March 25, 1986 explains the 1984 Committee's reporting of contributions received for your Congressional election. All contributions were designated in the 1984 Committee's reports as for the general election since you were unopposed for the Democratic nomination in the 9th Congressional District of New York. You decided it would be "improper" to collect funds for a primary election that you did not expect to be held.* You also state that when there were donor designations, the donors, both individuals and multicandidate committees, simply designated their contributions "for reelection".

* Within a few days after you accepted the Vice Presidential nomination of the Democratic Party on July 19, 1984, four individuals filed for the September 11, 1984, Democratic primary election in the 9th Congressional District of New York.

On the basis of these facts, as set forth in your request, you have asked whether the remaining funds of the 1984 Committee may be transferred to the Exploratory Committee for the purpose of paying its outstanding bills. The Commission concludes, subject to the qualifications stated below, that some funds of the 1984 Committee may be transferred to the Exploratory Committee to defray expenses for testing-the-waters activities.

The Act provides that "[a]mounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures...may be used by such candidate...for any other lawful purpose,...except that, with respect to any individual who is not a...Representative in...the Congress on January 8, 1980, no such amounts may be converted by any person to any personal use... ." 2 U.S.C. 439a; see 11 CFR 113.2(a).

Since you were a member of Congress on January 8, 1980, you are not prohibited by the Act from using your campaign funds for the described purpose regardless of whether the purpose is deemed to be a personal expense or for "any other lawful purpose." Furthermore, the Commission has previously stated that a candidate or individual may lawfully use contributions made to his or her principal campaign committee in a previous election cycle for purposes of testing-the-waters for Federal office in a subsequent election cycle. Advisory Opinion 1982-39; see also 11 CFR 110.3(a)(2). Accordingly, the Commission concludes that you may use contributions to the 1984 Committee to defray the expenses of The Exploratory Committee. A further question arises, however, concerning whether all of the funds currently held by the 1984 Committee may be used for this purpose.

The Act and Commission regulations permit the authorized committee of a candidate to accept otherwise lawful contributions made with respect to any election in which such candidate qualifies as a candidate. 2 U.S.C. 431(2), 441a; 11 CFR 110.1, 110.2. The fact that a candidate is unopposed in a primary election is immaterial to the application of a separate contribution limit for that primary election. 11 CFR 110.1(j)(2), 110.1(j)(3). See Advisory Opinions 1984-54 and 1982-47. Contributions to a candidate with respect to an election in which she does not participate as a candidate, however, must be refunded to the contributors. See Advisory Opinions 1985-41, 1982-49, and 1980-122.

You were a 1984 candidate for reelection to the House of Representatives under the Act and Commission regulations even though you had no opponents in the New York Democratic primary election scheduled to be held on September 11, 1984. The expiration of the filing date on July 26, 1984, ended your candidate status in the 1984 Congressional primary and general elections. See footnote above. Nevertheless, you were a Congressional candidate until July 26, 1984, and could lawfully receive (and retain) primary election contributions on or before that date. See 11 CFR 110.1(a)(2), see also Advisory Opinions 1980-30 and 1978-37. The fact that general election designations were made by the 1984 Committee when it itemized these contributions on its reports does not change the foregoing conclusion. Contributions received by the 1984 Committee no later than July 26, 1984, that were not donor-designated for the 1984 general election, are regarded as contributions made with respect to your 1984 primary election (House) candidacy. 11 CFR 110.1(a). Accordingly, they may be used for the 1986 testing-the-waters Senate effort. See Advisory Opinion 1982-39.

By contrast, contributions designated by the donors for your potential 1984 general election House candidacy should be returned since you were not a candidate with respect to that general election. 11 CFR 110.1(a), see Advisory Opinions 1985-41 and 1982-49. Returns or refunds should also be made of all contributions received after July 26, 1984, since you were no longer a 1984 Congressional candidate after that date with respect to either the primary or general election. Moreover, you apparently did not become a candidate for the 1986 election cycle; you did not reconstitute the 1984 Committee for some other political purpose; and there is no indication that you gave any notice to donors (or requested their authorization) of some alternative disposition of those funds. See Advisory Opinions 1985-5, 1984-32, and 1980-30.

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)

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures (AOs 1985-41, 1985-5, 1984-54, 1982-32, 1982-49, 1982-47, 1982-39, 1980-122,
1980-30, 1978-37)