



FEDERAL ELECTION COMMISSION
Washington, DC 20463

DISSENTING OPINION IN ADVISORY OPINION 1986-24

of

COMMISSIONER THOMAS J. JOSEFIAK

I recognize that the majority opinion in AO 1986-24 follows the precedent of the Commission's decision in AO 1983-13, and that the majority is demonstrating a well-intentioned desire to avoid frustrating a testator's bequest of funds to a political committee.

I must dissent, however, because I believe that the exception to statutory contribution limits fashioned by the Commission in AO 1983-13 for bequests is unsupportable as a matter of statutory interpretation. Even under the conditions by which the committee promises to deposit the bequest in an escrow account, to not draw upon more than \$5,000 per year and to not borrow against the escrow funds, the fact remains that the full amount of the bequest (in this case, \$70,000) will come under the complete and irrevocable legal control of the political committee by the arrangement approved in the advisory opinion. Such a transfer is clearly the making and receiving of a contribution in violation of the statutory limits of \$5,000 per year for any one multi-candidate committee and, in this case, of the overall \$25,000 per year federal contribution limit for an individual. The Commission would probably never permit such a transfer under any circumstances other than the unique situation of a bequest.

Furthermore, I think the exception to contribution limits reaffirmed by the majority in AO 1986-24 is unnecessary as a practical matter. The bequest could have been effected in a manner permitted under the FECA by use of a testamentary trust or other device. That approach could provide separate disbursements over time through an independent third party trustee, allowing the estate to be closed. Even when, as in this case, the contributor is deceased and the will itself cannot be changed, probate courts will generally permit the estate to effect the will of the testator by the setting up of a trust or other device where changed circumstances are not anticipated by and not the fault of the testator. The requestor in this case would have had an especially strong argument for a court approved solution, based upon reliance on AO 1983-13.

Since the Commission is unwilling to jeopardize any one bequest in order to overturn AO 1983-13, it may be advisable for the Commission to address this issue by revising its regulations.