



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 15, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-24

William L. Fallon
Hanson, O'Brien, Birney and Butler
888 Seventeenth Street, N.W.
Washington, D.C. 20006

Dear Mr. Fallon:

This responds to your letter of June 23, 1986, requesting an advisory opinion on behalf of Political Action for Candidate Election, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the treatment of a testamentary bequest.

You state that Political Action for Candidate Election ("PACE") is affiliated with the National Association of Social Workers, Inc. ("NASW"), a membership organization.¹ In 1985, the will of Alfred V. Taylor, a decedent member of NASW, was admitted for probate in the Surrogate's Court for the County of New York. In that will, Mr. Taylor left a percentage share of his residuary estate as an unrestricted gift to PACE. The estate made a partial distribution of this share to PACE on March 27, 1986, in the amount of \$30,000.² You state that PACE anticipates receiving a second distribution in 1987 or 1988 that will bring the total distribution from the Taylor estate to approximately \$70,000.

Based on Advisory Opinion 1983-13, PACE proposes the following course of action with respect to these distributions from the Taylor estate. PACE will deposit and maintain any distributions from the Taylor estate in escrow in a separate, interest-bearing savings account in

¹ PACE is the separate segregated fund of the National Association of Social Workers, its connected organization. PACE is registered with the Commission as a political committee under the title of "National Association of Social Workers Political Action for Candidate Election for Human services."

² You state that upon receipt of this distribution, PACE deposited the \$30,000 in a separate, interest-bearing escrow account to remain untouched and unencumbered pending the Commission's response to your advisory opinion request. See 11 CFR 103.3(b)(1).

PACE's name. It will withdraw no more than \$5,000 (including principal and interest) in any calendar year from this escrow account and deposit such amount in PACE's general account to be used for political purposes. You state that PACE "will not pledge, assign or otherwise obligate this escrow account balance in any manner to augment other PACE or NASW funds."

You also set out the proposed reporting of these transactions. PACE will disclose the bank and bank account name as a PACE depository by amendment to PACE's Statement of Organization. It will report the escrow account balance on each of its reports (at line 9 of Form 3X and Schedule D) as a debt or obligation owed to PACE. Schedule D shall include a brief description of the nature of the "debt" balance at the close of the relevant reporting period and shall include any interest credited to the account. The amount withdrawn from the escrow account and deposited into PACE's general account shall be reported as a contribution from the Taylor estate to PACE on Line 11(a) of Form 3X and itemized on Schedule A with a corresponding adjustment to Line 9 and Schedule D. These procedures will be followed until the balance of the escrow account is reduced to zero.

You ask whether PACE's proposed treatment of the testamentary bequest from the Taylor estate and its proposed procedures regarding the escrow account are permissible under the Act.

The Act provides that no "person" shall make contributions to a political committee "in any calendar year, which in the aggregate, exceed \$5,000." 2 U.S.C. 441a(a)(1)(C).³ The Act also provides that no political committee shall knowingly accept contributions in violation of the Act's limitations. 2 U.S.C. 441a(f). The Act defines "person" to include "an individual but makes no specific reference to an individual's testamentary estate. See 2 U.S.C. 431(11). Because the Act includes no express or implied prohibition on contributions from a decedent's estate, the Commission has previously decided that a testamentary estate is the successor legal entity to the testator and qualifies as a person under the Act subject to the same limitations and prohibitions applicable to the decedent in his or her lifetime. See Advisory Opinions 1983-13 and 1978-7. Thus, the Taylor estate may make, and PACE may accept, contributions (i.e., gifts for the purpose of influencing a Federal election) in any calendar year which in the aggregate do not exceed \$5,000. These contributions are reportable in accordance with 11 CFR 104.3(a)(4)(i) as made by the decedent's estate.

In Advisory Opinion 1983-13, the Commission stated that a separate segregated fund (a political committee not authorized by a candidate) could accept limited annual distributions derived from a testamentary bequest of \$20,500 provided that it placed the funds in a separate escrow account from which it withdrew no more than \$5,000 in any calendar year until the escrow account balance was reduced to zero. Each withdrawal from the escrow account was reportable as a contribution from the decedent's estate to the committee at the time of the withdrawal and subject to the limitations of the Act. The Commission also stipulated that the committee could not pledge, assign, or otherwise obligate the escrow funds to provide anything of value to the committee, its connected organization, or any affiliated entities. The Commission further stated that the committee should disclose the escrow account as a depository in its

³ The Act provides other limitations with regard to a person's aggregate contributions to an authorized committee of a candidate and to political committees established and maintained by national political parties. See 2 U.S.C. 441a(a)(1)(A) and (B). These provisions are not implicated by your request.

Statement of Organization. The Commission also treated the escrow account as analogous to an obligation owed to the committee and set out the relevant reporting requirements for the escrow account.

PACE's proposed treatment of the testamentary bequest from the Taylor estate and its proposed procedures regarding the escrow account follow that set out and approved in Advisory Opinion 1983-13. Accordingly, the Commission concludes that PACE make undertake its proposed activity regarding the Taylor testamentary bequest and the escrow account as described in its request and this opinion. The Commission does not address any other treatment of the bequest that may also be permissible, such as the deposit of all or a portion of this bequest in a non-Federal account established pursuant to 11 CFR 102.5(a), since PACE has not presented any specific transaction or activity in this regard. See 11 CFR 112.1(b).

The Commission also cautions, as it did in Advisory Opinion 1983-13, that this opinion relates only to testamentary bequests and should not be viewed as expressing any opinion on other estate planning procedures such as inter vivos trusts, guardianships, or powers of appointment or attorney, or any other methods by which a person may make gifts to a political committee. The Commission also expresses no opinion regarding any tax ramifications of the bequest and escrow account, nor as to the construction or interpretation of Mr. Taylor's will, since such questions are outside its jurisdiction.

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 1983-13 and 1978-7)