



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 24, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-36

Honorable Charles E. Bennett
2107 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Bennett:

This responds to your letter of September 16, 1986, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed distribution of excess campaign funds.

You state that you are a candidate for re-election to the House of Representatives and that you are running unopposed in the 1986 general election. Because of your lack of opposition in the general election, you explain that your "campaign funds...will not be needed in any great extent this year....". You note in your request that you are an announced candidate for the chairmanship of the House Armed Services Committee. You ask whether you are permitted to use your excess campaign funds¹ to make contributions to other Congressional candidates. You indicate, in asking this question, that you are unsure if such contributions are appropriate "because it might be construed that even though nothing was said about quid pro quo, there nevertheless might remain the appearance at least of seeking support in return for financial assistance to the campaign."

Under the Act and Commission regulations, the term "excess campaign funds" is defined as "amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures." 2 U.S.C. 439a and 11 CFR 113.1(e). Excess campaign funds may be used for a variety of specified purposes that are expressly made lawful: they may be used to defray any ordinary and necessary expenses incurred

¹ The Commission notes that your principal campaign committee, Committee to Re-elect Charles E. Bennett ("the Committee"), reported cash-on-hand of \$200,486 as of August 13, 1986.

in connection with the candidate's duties as a holder of Federal office; they may be contributed to any organization described in section 170(c) of title 26; and they may be transferred without limitation to any national, State, or local committee of any political party. Although your proposed contributions would not be covered by any of these express provisions, the Act also states that excess campaign funds may be used "for any other lawful purpose." 2 U.S.C. 439a and 11 CFR 113.2. In previous advisory opinions the Commission has concluded that contributions by the principal campaign committee of one Federal candidate to that of another Federal candidate are not prohibited, but are subject to limitation. Advisory Opinions 1985-13, 1983-14, and 1981-15.²

Accordingly, the Commission concludes that nothing in the Act or Commission regulations would prohibit the proposed contributions of your excess campaign funds by the Committee to other Congressional candidates. Insofar as the Act and Commission regulations are concerned, this conclusion is not altered by the fact that you are a candidate for the chairmanship of the House Armed Services Committee.

The Commission notes that because the Committee is considered to be a "person" as defined by 2 U.S.C. 431(11) and 11 CFR 100.10, any contribution it makes to the campaign committee of another Federal candidate would be subject to the \$1,000 per election limit set forth in 2 U.S.C. 441a(a)(1)(A) and 11 CFR 110.1. Although the Committee is a "person," it is not an individual. Thus, its contributions are not subject to the aggregate \$25,000 calendar year limit of 2 U.S.C. 441a(a)(3), which, by its terms, only applies to individuals. 11 CFR 110.5, see Advisory Opinion 1984-34.

The Commission expresses no opinion concerning the possible application of other Federal statutes or House rules to your proposed activity, since those issues 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

² The Act's legislative history supports this conclusion. The House Report accompanying H.R. 5010 states that "[c]ontributions by an authorized committee of a candidate to an authorized committee of another candidate may be made so long as the contribution or contributions to a single candidate do not exceed \$1,000." H.R. Rep. No. 96-422, 96th Cong., 1st Sess. at 13 (1979). Such contributions are not considered to be "support" within the meaning of 2 U.S.C. 432(e)(3) and 11 CFR 102.12(c)(2) and 102.13(c)(2), which prohibit an authorized committee from supporting more than one candidate. See id.