



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 6, 1987

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-45

Richard M. Daly
Suite 800
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Dear Mr. Daly:

This responds to your letter of December 18, 1986, on behalf of Senator Jeff Bingaman and the Jeff Bingaman for U.S. Senate Committee concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the payment of interest on loans Senator Bingaman made to the Committee.

The Jeff Bingaman for U.S. Senate Committee ("the 1982 Committee") filed its Statement of Organization with the Commission on March 23, 1981, as Senator Bingaman's principal campaign committee for his 1982 campaign for the United States Senate.¹ You state that beginning in 1981 and continuing throughout the 1982 campaign and for several years thereafter, Senator Bingaman periodically loaned funds to the 1982 Committee to pay campaign expenses and to repay bank loans which he had obtained for campaign purposes. The 1982 Committee has reported the receipt of these funds as loans by Senator Bingaman from his personal funds.²

You further state that when these loans were made to the 1982 Committee, they were not memorialized in any written instruments. You add that no agreement was made between the 1982 Committee and Senator Bingaman regarding the payment of interest on these loans. You do

¹ Senator Bingaman has designated a separate committee, A Lot of People Who Support Jeff Bingaman, as his principal campaign committee with respect to the 1988 campaign.

² For purposes of this opinion, the Commission presumes that these loans to the 1982 Committee were made by Senator Bingaman from his personal funds, as defined by 11 CFR 110.10(b), and were not from funds he obtained from others, including family members or his spouse, as agent of his committee. See 2 U.S.C. 432(e)(2); Advisory Opinions 1985-33 and 1984-60.

state, however, that after staff discussions during the course of the 1982 campaign, the 1982 Committee's treasurer began in October 1982 to report that the loans from Senator Bingaman to the Committee were to bear interest at 13 percent per annum. You add that this reporting of a 13 percent interest rate has been carried forward on subsequent reports by the 1982 Committee.³ You further state that Senator Bingaman and the 1982 Committee have always understood that these loans were eventually to be repaid.

You note that for five years Senator Bingaman has refrained from asking the 1982 Committee to pay interest on the sums he had loaned to it. You state that he did not wish to collect interest on these loans while campaign debts to third parties remained outstanding and unpaid, that the 1982 Committee had made sporadic progress in paying off these loans, and that Senator Bingaman and the 1982 Committee had thought it possible that these loans would be repaid in the near future. You state that, nevertheless, in July 1986, the need to direct all future fundraising efforts toward the Senator's 1988 re-election campaign became evident. At that time, approximately \$272,623.41 in loans by Senator Bingaman to the 1982 Committee remained outstanding and unpaid.⁴

You note that this balance will probably remain unpaid until January 1, 1989, at the earliest.

You state that Senator Bingaman and the 1982 Committee have agreed to begin paying, as of August 1, 1986, a rate of interest of 9 percent per annum on the outstanding loan balance. You note that this rate was equal to one-half of one percent below the prime lending rate charged by the Banquest First National Bank of Santa Fe on August 1, 1986, and was selected as a reasonable rate. To memorialize this agreement as well as the underlying debt, the 1982 Committee has given Senator Bingaman its promissory note to pay to the Senator on January 1, 1989, the sum of \$272,623.41 plus accrued interest from August 1, 1986, at the rate of 9 percent

³ Given the lack of any written agreement to require the payment of interest on these loans, you describe the reporting of the 13 percent interest rate as a reporting error that will be corrected by amendments to the reports in which that rate appears. The Commission expresses no opinion regarding any questions that may arise from the 1982 Committee's reporting of a 13 percent interest rate or its amendments to those reports, nor as to the reporting of these loan transactions including loans made, loan repayments, and outstanding loan balance. See 11 CFR 112.1(b).

⁴ The loan balance of \$272,623.41 is disclosed on Schedule C of the 1982 Committee's most recent report covering the period July 1, 1986 through December 31, 1986. This report does not itemize each specific loan that remains outstanding, the dates those loans were made, the cumulative repayments made on each such loan, or the outstanding balance for each loan. The Act and Commission regulations require that each outstanding loan by Senator Bingaman to the 1982 Committee be separately itemized as to date made, loan amount (including interest rate, if any), loan repayments (including amounts and dates), interest payments (if any), and outstanding amount of each loan as of the close of each reporting period. See 2 U.S.C. 434(b)(3)(E), 434(b)(5)(D), 434(b)(8); 11 CFR 104.3(a)(4)(iv), 104.3(b)(4)(ii), 104.3(d), 104.11(a).

per annum, compounded annually.⁵ You note that the 1982 Committee and the Senator hope to repay this debt in full by one or more means: (1) the transfer of sufficient excess funds from the Senator's 1988 campaign committee to the 1982 Committee; (2) the transfer of the debt from the 1982 Committee to the 1988 committee, which would then pay the debt; or (3) the resumption of fundraising activities by the 1982 Committee.⁶

You ask whether the 1982 Committee may begin to pay a reasonable rate of interest, as of August 1, 1986, on a debt it owes to Senator Bingaman arising from sums he loaned to the 1982 Committee beginning in 1981 for use in connection with his 1982 campaign.

As you note in your request, neither the Act nor Commission regulations specifically address the payment of interest on loans made by a candidate to his or her principal campaign committee.

Commission regulations, however, do permit a candidate (other than one who receives public funding) to make unlimited expenditures from his or her personal funds. 11 CFR 110.10(a). The regulations also indicate that loans by a political committee to any person may include an obligation to pay interest at a "commercially reasonable rate" and that expenditures may include the payment of interest on an obligation. See 11 CFR 100.7(a)(1)(i)(E); 100.8(a)(1)(i). Commission regulations further provide that excess campaign funds may be used for any lawful purpose, except that with respect to an individual who was not a Senator or Representative in Congress on January 8, 1980, no such amounts shall be converted by any person to any personal use "other than...to repay to a candidate any loan the proceeds of which were used in connection with his or her campaign." 11 CFR 113.2(d); see also, 2 U.S.C. 439a.

Thus, the regulations recognize that a candidate may make loans from personal funds in unlimited amounts to his or her campaign committee on an interest-bearing or interest-free basis, but subject to the reporting requirements of the Act and Commission regulations. The regulations further contemplate that the repayment of a loan may also include an accompanying payment of interest, and that the interest payment may be treated as an expenditure or operating expense. The regulations specifically make it lawful for a candidate's committee to repay loans the candidate has made to the committee without such repayment being considered a prohibited conversion of campaign funds to personal use. It would follow that the payment of interest on a candidate's loans from personal funds to his or her campaign committee, to the extent that the

⁵ The stated loan balance of \$272,623.41 on which interest will accrue as of August 1, 1986, appears to represent only unpaid loan principal owed to Senator Bingaman. The Commission thus assumes from the factual representations made in the request as well as in the proposed promissory note, that this amount does not include any accrued interest owing to Senator Bingaman and that the 1982 Committee has not heretofore made any interest payments to Senator Bingaman, or to any other person on his behalf, with respect to the subject loans. (Interest payments have been reported with respect to bank loans made to the 1982 Committee.)

⁶ Since you have not presented any questions regarding any of these methods of repaying the loans, the Commission expresses no opinion regarding such issues. It does caution you, however, that the applicable rules and procedures may vary according to the method or methods used. See generally, Advisory Opinions 1981-9, 1980-143, and 1980-32.

interest charged does not exceed a commercially reasonable rate, would also be lawful⁷ and not a prohibited personal use.

Senator Bingaman was not a Senator or Representative in Congress on January 8, 1980. Thus, he is not covered by the "grandfathering" provision of 2 U.S.C. 439a. You state, however, that the proposed rate of 9 percent per annum that the 1982 Committee proposes to pay to Senator Bingaman is one-half of one percent less than the prime lending rate of the Banquest First National Bank of Santa Fe on August 1, 1986, the effective date for the proposed accrual of interest. Since the 9 per cent rate is less than the stated prime rate, it does not exceed a commercially reasonable rate, and it is presumably not usurious under New Mexico law. Thus, the 1982 Committee's payment of this rate of interest on the reported loan obligation⁸ owed to Senator Bingaman would be lawful, and would not be a prohibited personal use under the Act and regulations.

Accordingly, the Commission concludes that the 1982 Committee may pay interest to Senator Bingaman at the rate of 9 percent per annum on the reported outstanding loan balance, as of August 1, 1986. The interest payments must be reported and itemized as operating expenses of the 1982 Committee in accordance with the Act and Commission regulations. 2 U.S.C. 434(b)(5)(A), 11 CFR 104.3(b)(4).

The Commission expresses no view regarding any tax ramifications or the application of any Senate rules, 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)

Scott E. Thomas
Chairman of the
Federal Election Commission

Enclosures (AOs 1985-33, 1984-60, 1981-9, 1980-143, 1980-32 and 1977-58)

⁷ The rate of interest charged by a candidate to his or her campaign committee would also be subject to State usury statutes and would not be lawful under the Act unless in compliance with those statutes.

⁸ Reports filed by the 1982 Committee have continuously disclosed loans made by Senator Bingaman since 1981 and periodic repayments of those loans. (But see discussion of reporting in footnote four.) This pattern of reporting distinguishes this situation from Advisory Opinion 1977-58. In that opinion the Commission concluded that the principal campaign committee of a candidate, who made transfers (or gifts) of his personal funds to the committee, could not later report such gifts as "loans" from the candidate thereby improperly creating a retroactive, previously unreported committee "obligation" to "repay" him with campaign funds.