



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 3, 1987

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-3

Harry O'Connor
Box 5432
Playa Del Rey, CA 90296

Dear Mr. O'Connor:

This responds to your letters of December 18, 1986, and January 11, 1987, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the disposition of a media-buy refund you received in 1980 on behalf of the Reagan for President Committee ("RPC").

Your two letters and the enclosures with your December 1986 letter indicate that your firm, O'Connor Creative Services, received a refund payment of \$5,350.92 in 1980 from the CBS Radio Network. This refund represented non-expended program fees for a nationwide radio buy in late 1979 to broadcast a five minute radio address by Mr. Ronald Reagan. You made this buy on behalf of RPC, the principal campaign committee authorized by Mr. Reagan in his 1979-80 campaign for the Republican Party presidential nomination. The refund was made because several CBS radio affiliates did not clear time to carry the Reagan address.

Upon receiving the CBS refund check in 1980, you apparently deposited it in your business account and then sought directions for disbursing it from the RPC treasurer, Angela Bay Buchanan, or another RPC representative. You state that for reasons unknown to you, and to your office manager during that period, several months elapsed before you received directions from RPC (you assume from Ms. Buchanan) for returning the unused funds. You also explain that within days after receiving RPC's instructions to return the CBS refund to RPC, a check was written for \$5,350.95 payable to the Reagan for President Campaign and signed by two of your firm's officers. Your December 1986 letter included a copy of this check which is dated 6/9/81 and drawn on your business account at City National Bank in Studio City, California. An envelope to send the check was also prepared and addressed to RPC in Arlington, Virginia.

You further state that this 1981 check, for "other unexplained reasons," was not forwarded immediately to RPC. Instead the check and envelope were misplaced in an unrelated file of your business which later relocated; the file holding the check was then placed in storage. The check was discovered after a search of your files in April 1986. This search was prompted by the FBI security investigation related to your reappointment to the board of directors of the Corporation for Public Broadcasting.

In light of the FBI inquiry, you have asked the Commission for an advisory opinion to "offer a resolution of" the issue. In this context you seek Commission advice as to the proper disposition of the CBS refund that you received in 1980 on behalf of RPC and have not yet disbursed.

The Commission concludes that, in the circumstances presented, the only proper disposition of the CBS refund proceeds (\$5,350.92) is payment by you of an equal amount to the Secretary of the Treasury of the United States for deposit in the Presidential Election Campaign Fund, established pursuant to 26 U.S.C. 9006(a).

You state that your firm purchased the CBS radio network time for RPC and received payment from RPC for this purpose. RPC payments to your firm for these media buys were required to be reported as its operating expenditures. 2 U.S.C. 434(b)(5). RPC also would have been required to report the CBS refund it should have received from your firm as an offset to its operating expenditures. 2 U.S.C. 434(b)(3)(F). In addition, RPC received Federal matching payments in 1980. Accordingly, it was required to limit its expenditures and to spend the Federal matching payments only for qualified campaign expenses. See 26 U.S.C. 9032, 9033, 9034, 9035 and 2 U.S.C. 441a(b). At the conclusion of the campaign period, RPC was required to make the appropriate refunds of Federal matching payments which were improperly spent or were unexpended. 26 U.S.C. 9038(b)(2), (b)(3).

Given your explanation of the circumstances involving this refund and the failure to pay it over to RPC, the refund would not have been reported by RPC under the Act; nor would RPC have included the refund amount in its unexpended balance at the conclusion of the 1980 campaign period when RPC repayments to the Treasury were required to be made. RPC terminated its filing status under the Act several years ago, without ever receiving the refund proceeds. Thus, the refund may not now be treated as "excess campaign funds" of RPC. 11 CFR 113.2(e), 2 U.S.C. 439a. Moreover, the Commission's three year notification period to demand RPC repayments of unspent matching funds expired in 1984. 26 U.S.C. 9038(c). Accordingly, there is no basis for permitting you to make the refund at this time to RPC, or to any other person designated by RPC or by one of its former officers.

The stated conclusion also accords with Advisory Opinion 1977-43 wherein the Commission concluded that a terminated principal campaign committee could not be reactivated solely for the purpose of accepting a contribution received after its termination that would have been distributed pursuant to the designation of the former candidate. The situation in the instant opinion is distinguishable from prior Commission opinions that have allowed post-termination refunds, or outstanding debts owed to a political committee, to be paid or assigned to others. See Advisory Opinions 1980-114 and 1979-5. In this case the CBS refund would, in part, have been

included in the required RPC repayment to the Treasury and could not have been paid to another person.

While the Commission may no longer demand repayment from RPC with regard to this CBS refund, it could and would have done so if you had paid over the refund to RPC in 1980 or 1981. Thus, the Commission concludes that you should remit your check, made payable to the Treasurer of the United States in the amount of \$5,350.92, to the Commission immediately upon the receipt of this opinion.

This response constitutes an advisory opinion concerning application of the Act and Commission regulations 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 1980-114, 1979-5, and 1977-43)