FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 29, 1988

<u>CERTIFIED MAIL,</u>
<u>RETURN RECEIPT REQUESTED</u>

ADVISORY OPINION 1988-7

Peter M. Bakal
437 State Street
Albany, N.Y. 12203

Dear Mr. Bakal:

This responds to your letter of February 5, 1988 requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the use of a cash gift as a personal expenditure.

You state that you are presently an "undeclared candidate" for the United States House of Representatives from New York. Commission records do not indicate that you were a candidate for Federal office in either 1984 or 1986. You explain that during each of the last three years, 1985 through 1987, your parents gave you a $20,000 cash gift and that you anticipate your parents will give you another $20,000 gift in 1988.

You ask whether you may contribute these monetary gifts to your campaign as personal funds even if you have not received the 1988 gift before you become a 1988 Congressional candidate and "file for candidacy."[1]

The Act prohibits any person from making contributions to any candidate or the candidate's authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000. 2 U.S.C. 441a(a)(1)(A). Commission regulations, however, permit candidates for Federal office to make unlimited campaign expenditures from personal funds. 11 CFR 110.10(a).[2] "Personal funds" include salary and other income earned from bonafide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is the beneficiary; and gifts of a personal nature which had been customarily received prior to candidacy. 11 CFR

110.10(a)(2). These regulations were intended to reflect the Supreme Court's decision in <u>Buckley v. Valeo</u>, 424 U.S. 1, 52 (1976).

Based on your statements and the fact that you were not a candidate for Federal office in 1984 or 1986, the $20,000 cash gifts you received for the years 1985 through 1987 appear to be of a personal nature, rather than made in anticipation of or related to any campaign for Federal office. Accordingly, the Commission concludes that those gifts represent personal funds and are not subject to the contribution limits under the Act. Moreover, because the receipt of $20,000 per year from your parents in 1985, 1986, and 1987 indicates a repetitious custom of monetary gifts to you, apparently without regard to your possible candidacy for Federal office, the Commission concludes that another $20,000 cash gift under similar circumstances from your parents during 1988 will similarly be considered your personal funds regardless of whether you receive it before or after you become a candidate.

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)

Thomas J. Josefiak
Chairman for the Federal Election Commission

1/ The Commission cautions that an individual becomes a candidate under the Act when that individual receives contributions or makes expenditures in excess of $5,000. 2 U.S.C. 431(2)(A), 11 CFR 100.3(a)(1). Any contributions such as a gift, loan, advance, deposit of money, in-kind contribution or anything of value made by any person for the purpose of influencing any election for Federal office, will count towards this $5,000 threshold. 11 CFR 100.7(a). Further, any expenditures will also count towards the $5,000 expenditure threshold for triggering candidate status. 11 CFR 100.8(a).

2/ Presidential candidates who accept Federal payments under chapters 95 or 96 of the Internal Revenue Code are subject to limits on campaign expenditures from their personal funds. 26 U.S.C. 9004(d), 9035.