



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 30, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-8

Thomas W. Keen
McDonald, Hopkins & Hardy Co., L.P.A.
1100 East Ohio Bldg.
Cleveland, OH 44114

Dear Mr. Keen:

This responds to your February 10, 1988 letter requesting an advisory opinion on behalf of the estate of Richard P. Nelson, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to trust funds designated for a political committee.

You state that in 1982 Richard P. Nelson created a trust designating you as trustee. The trust was designed to receive the assets of Mr. Nelson's estate and insurance policy proceeds payable upon his death. When Mr. Nelson died in September 1986, the trust had several beneficiaries including the National Office Machine Dealers Association Political Action Committee ("NOMDA"), a multicandidate political committee registered with the Commission. You indicate that in January 1988 funds were transferred from the estate to the trust.

The terms of the trust entitle NOMDA to substantially more than \$5,000, which is the applicable annual contribution limit for contributions by any person to a political committee such as NOMDA. To avoid an excess contribution under the Act, you propose as trustee to retain the funds designated for NOMDA, contributing \$5,000 annually until NOMDA receives the total amount designated in the trust agreement. In the alternative, you propose to transfer the total amount designated for NOMDA to an escrow account established by NOMDA, provided NOMDA agrees to meet all conditions set forth in Advisory Opinions 1986-24 and 1983-13.

You ask whether your proposed alternatives for distribution of the Nelson trust estate proceeds to NOMDA 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). 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 "persons to include "an individual" but makes no specific reference to a trust or 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, including those distributed through a trust created by the decedent, 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 the decedent's lifetime. Advisory Opinions 1986-24, 1983-13 and 1978-7.

Therefore, the Commission concludes that Mr. Nelson's estate, through the trust, may make, and NOMDA may accept, contributions in any calendar year which in the aggregate do not exceed \$5,000. These contributions are reportable by NOMDA in accordance with 11 CFR 104.3(a)(4)(i) as made by the decedent's trust estate.

As an alternative to the trust making a \$5,000 yearly contribution to NOMDA, you also propose that the trust distribute the entire amount designated for NOMDA, provided NOMDA establishes an escrow account and follows the procedures set forth in Advisory Opinions 1986-24 and 1983-13. In those opinions, the Commission concluded that a political committee could accept limited annual distributions derived from a testamentary bequest provided the committee 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 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 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.

Based on these opinions, the Commission concludes that, as an alternative to trust contributions of \$5,000 per year to NOMDA, the trust may now distribute the full amount designated under the trust agreement to NOMDA, provided NOMDA establishes an escrow account to receive, hold, and release the funds in accordance with, he procedures set out in Advisory Opinions 1986-24 and 1983-13.*

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

Enclosures (AOs 1986-24, 1983-13, 1978-7)

*/ The Commission cautions that this opinion relates only to distributions from a trust funded by a decedent's estate and should not be viewed as expressing an 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 a contribution to a political committee in the person's lifetime.