



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 10, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-24
H. Lee Halterman
The Committee for Congressman Ronald V. Dellums
P.O. Box 29164
Oakland, California 94604

Dear Mr. Halterman:

This responds to your letter of May 19, 1988, requesting an advisory opinion on behalf of The Committee for Congressman Ronald V. Dellums concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to proposed joint campaign activities.

Your letter states that four campaign committees--two for Federal office candidates, one for a State Assembly candidate, and one for a County Board candidate--have drafted an agreement to work together in Berkeley, California, in the June 1988 California primaries. The Jesse Jackson for President '88 committee, The Committee for Congressman Ronald V. Dellums, the Tom Bates Campaign, and the Committee to Re-elect John George to the Alameda County Board of Supervisors plan to establish a joint fundraising and joint expenditures committee to be known as The June '88 Campaign. The Campaign will raise funds, produce and distribute joint campaign literature, and share expenses, including utility costs, office rent, and the hiring of staff to coordinate volunteers' work. Representatives from each candidate's committee and mutually agreed-upon local community members will make decisions for the Campaign.

The draft agreement anticipates that the budget for The June '88 Campaign will be \$16,000.¹ Each participating candidate's committee will be responsible for its pro rata share of expenses not covered by joint fundraising. Each committee's share of funds raised and funds expended will be allocated in accordance with the following formula:

Jesse Jackson for President '88	37%
Committee for Congressman Dellums	31%
Tom Bates Campaign	16%

You explain that these percentages reflect the prominence and space that will be given to each candidate in the literature that The June '88 Campaign will produce.

The draft agreement also provides that The Committee for Congressman Ronald V. Dellums ("Committee") will be "the operating/fundraising representative for The June '88 Campaign and [will] maintain the campaign bank account." Your letter further explains that the Committee will "establish and maintain a checking account for the joint operations and . . . [will] be responsible for maintaining records, depositing contributions and reimbursements, and paying expenses."

You ask whether the proposed joint campaign organization would be lawful under the Act and Commission regulations.

Commission regulations provide for joint fundraising activities. See 11 CFR 102.17 (joint fundraising by committees other than separate segregated funds); 11 CFR 9034.8 (joint fundraising by presidential primary candidates who receive Federal matching funds). The regulations require the participants in a joint fundraising effort to enter into a written agreement that identifies a fundraising representative and includes a formula for the allocation of fundraising proceeds. 11 CFR 102.17(c)(1); 11 CFR 9034.8(c)(1). The participants are also to use the formula to allocate the expenses incurred in fundraising. *Id.* Further, the amount of funds advanced by each participant for fundraising costs must be in proportion to the allocation formula. 11 CFR 102.17(b)(3); 11 CFR 9034.8(c)(2).² The participants or the fundraising representative must establish a separate depository account for the receipt and disbursement of the joint fundraising funds. All contributions deposited into this separate account must be permissible under the Act. 11 CFR 102.17(c)(3)(i); 11 CFR 9034.8(c)(4)(i). These requirements apply even if not all the participants in the joint fundraising activities qualify as political committees under 11 CFR 100.5.³

The regulations specify who may be the fundraising representative. The participants in a joint fundraising effort may either establish a separate committee, or select a participating committee to act as the fundraising representative for all the participants. The fundraising representative must be a reporting political committee and an authorized committee of each candidate for Federal office participating in the joint fundraising activity.⁴ 11 CFR 100.5 (definition of political committee); 11 CFR 102.17(a)(1)(i) and (b)(2); 11 CFR 9034.8(b).

The participants in The June '88 Campaign appear to have met the basic requirements outlined in the previous paragraphs for establishing a lawful joint fundraising program. First, they have drafted a written agreement that identifies a fundraising representative and includes a formula for the allocation of fundraising proceeds and expenses. Second, the fundraising representative whom they have selected is, Commission records reveal, a reporting political committee under 11 CFR 100.5.⁵ Third, the draft agreement provides that the representative shall establish a separate account for the fundraising campaign.⁶

To foreclose future difficulties, the Commission points out that the inclusion of non-Federal office candidates in The June '88 Campaign may trigger the application of other important joint

fundraising regulations. For example, your letter does not indicate whether the two non-Federal office candidates whose committees will participate in The June '88 Campaign intend to accept contributions from sources and in amounts permitted under California law, but forbidden to Federal office candidates under the Act and Commission regulations. See, e.g., 2 U.S.C. 441b and 11 CFR 114.2(b) and (c) (corporations and labor organizations); 2 U.S.C. 441c and 11 CFR 115.2 (Federal government contractors); 2 U.S.C. 441a(a)(1)(A) and 11 CFR 110.1(b)(1) (\$1,000 maximum aggregate contribution).

If the non-Federal candidates accept contributions prohibited by the Act, the fundraising representative and the other Campaign participants should take steps to protect the Federal office candidates.⁷ The participants should also be aware that acceptance of such contributions may affect the application of the allocation formula set out in the joint fundraising agreement.⁸

The Federal office candidates in particular must be careful to disclose in the joint solicitation notices and in the other joint campaign literature all the information required by Commission regulations. See 2 U.S.C. 441d; 11 CFR 110.11; 11 CFR 102.17(c)(2); and 11 CFR 9034.8(c)(3). Cf. Advisory Opinion 1986-29 (discussion of slate cards and direct mailings).

The participation of a presidential primary candidate who has qualified for Federal matching funds (Mr. Jackson) makes additional regulations applicable. Most important, under 11 CFR 9034.8(c)(7)(i), the Committee, as fundraising representative, may not distribute or reallocate funds so as to maximize the matchability of contributions.⁹

This response constitutes an advisory opinion concerning applications 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 of the Federal Election Commission

Enclosure (AO 1986-29)

1/ The tentative budget categories and amounts are Staff, \$4,000; Office, \$2,500; Telephones, \$1,200; Telephone Bank, \$2,000; Literature, \$4,000; Mailing, \$1,000; and Miscellaneous, \$1,300.

2/ A participant may advance more than its proportionate share of the fundraising costs, but the amount advanced that is in excess of the participant's proportionate share may not exceed the amount that the participant can legally contribute to the remaining participants. 11 CFR 102.17(b)(3)(ii); 11 CFR 9034.8(c)(2)(ii). See 11 CFR 102.12(c)(2) and Part 110.

3/ The Commission notes that its jurisdiction extends only to those persons and organizations covered by the Act and by its implementing regulations. In responding to your inquiry, the Commission expresses no opinion about the possible applicability of California laws to purely State and local political activity.

4/ The fundraising representative and any other participating committees may collect contributions; however, all contributions received by other participants must be forwarded to the fundraising representative. 11 CFR 102.17(b)(2); 11 CFR 9034.8(b)(3)(ii).

5/ The Committee for Congressman Ronald V. Dellums is registered with the Commission as Mr. Dellums's principal campaign committee.

6/ The participating political committees for Mr. Dellums and Mr. Jackson must amend their Statements of Organization to reflect the fundraising account as an additional depository if it is established at a bank (or other permissible entity) not already identified. 11 CFR 102.17(c)(3)(i); 11 CFR 9034.8(c)(4)(i).

7/ See 11 CFR 102.17(c)(2)(ii)(B); 11 CFR 102.17(c)(3)(i); 11 CFR 9034.8(c)(4)(i); 11 CFR 102.17(c)(4)(i) and (ii); and 11 CFR 9034.8(c)(5)(i).

8/ See 11 CFR 102.17(c)(6)(iii); 11 CFR 102.17(c)(7)(i)(A). In the absence of special circumstances, the agreed-upon allocation formula applies to each contribution received by the joint fundraising participants.

9/ To help ensure the observance of this prohibition, the regulations also provide that, unless certain special circumstances arise, each contribution must be allocated among the participants in accordance with the allocation formula. 11 CFR 9034.8(c)(7)(i).