



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

May 26, 1989

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1989-5

The Honorable Richard Ray  
United States House of Representatives  
425 Cannon Office Building  
Washington, D.C. 20515

Dear Mr. Ray:

This responds to your letter dated April 25, 1989, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended, ("the Act") and Commission regulations to the proposed refund of an unlawful contribution accepted without knowledge of its illegality by your principal campaign committee.

You explain that in May 1988, Joseph Edmund Hill sent the Richard Ray for Congress Campaign Committee ("committee") a \$1,000 check that was drawn on Mr. Hill's personal checking account. In late January 1989, you learned that Mr. Hill had recently pleaded guilty in the United States District Court for the Eastern District of Virginia to four counts of making political contributions in the name of another. Mr. Hill, it appears, had been acting as a conduit for unlawful corporate contributions by the Sperry Corporation and its successor company, Unisys.<sup>1</sup> Since 1982, the corporation had been giving money from its treasury to Mr. Hill for the purpose of making political contributions. The \$1,000 received by your committee came from that impermissible source and was sent by Mr. Hill at the corporation's request.<sup>2</sup>

You state that you mailed a refund check to Mr. Hill, the ostensible contributor, in care of his attorney of record. Both Mr. Hill and his attorney refused to accept the refund, however, and returned the check. Under these circumstances, you ask whether the Act and Commission regulations require your committee to repay the \$1,000 to Sperry/Unisys, the actual source of the illegal contribution.

As you know, under 11 CFR 103.3(b)(2),

if the treasurer of a political committee . . . determined that at the time a contribution was received and deposited, it did not appear to be made by a corporation . . . or made in the name of another, but later discovers that it is illegal based on new evidence not available to the political committee at the time of receipt and deposit, the treasurer shall refund the contribution to the contributor within thirty days of the date on which the illegality is discovered. . . .

(Emphasis added.) The resolution of your inquiry turns on the interpretation of the phrase "to the contributor."

In Advisory Opinion 1984-52, Representative Marty Russo's campaign committee received and deposited certain contributions that appeared to come from the personal funds of corporate employees in fact, they were financed by the corporation through sham employee bonuses. When Mr. Russo learned of the illegality, he asked the Commission whether his committee should refund the contributions to the corporate employees or to the corporation. The Commission stated that

the Criminal Information and the guilty plea of the corporation to the charges therein constitute an adequate factual basis for concluding that the corporation should receive the refunds. . . . The employees were not the actual sources of the contributions . . . . Given the corporate payments received by the employees to make them whole for their initial "contributions" to the candidates, the employees' personal funds were not reduced as a result of this scheme. Accordingly, they should not receive refunds from your committee.

In light of 11 CFR 103.3(b)(2) and Advisory Opinion 1984-52, the Commission concludes that your committee must refund the illegal contribution to the corporation that was its source, Sperry/Unisys. According to the "Statement of Facts" that Mr. Hill did not dispute in pleading guilty, see n.2, supra, he used no personal funds for his "contribution" to the committee instead, he used money that the corporation had given to him for the purpose of making the contributions that it wanted. Mr. Hill's personal funds "were not reduced as a result of this scheme." The \$1,000 contribution came from the corporation's treasury and thus a like amount should be refunded to the corporation.<sup>3</sup>

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.

Yours truly,

(signed)

Lee Ann Elliott  
Vice Chairman for the Federal Election Commission

Enclosure (AO 1984-52)

1/ See 2 U.S.C. 441b (prohibits making or knowingly accepting corporate contributions) and 441f (prohibits making a contribution in the name of another or knowingly accepting such a contribution). Also see 11 CFR 110.4(b) and 114.2(c).

2/ You and your staff rely on information found in the "Statement of Facts" and the "Plea Agreement" filed in Mr. Hill's criminal case. You note that Mr. Hill stated in his "Plea Agreement" that he did "not disagree with [the 'Statement of Facts'] . . . in any material respect."

3/ Commission regulations require authorized committees to itemize contribution refunds and to identify the person who receives the refund. 11 CFR 104.3(b)(4)(v). Although your committee is not required to do so, it may in its next report, covering the period in which it makes and reports the refund, identify Mr. Hill as the individual in whose name the corporate contribution was made. The committee need not amend its prior reports. See Advisory Opinion 1984-52, n.2.