



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 11, 1989

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1989-15

Thomas Tew
Tew Jordan Schulte & Beasley
701 Brickell Avenue
Miami, Florida 33131-2801

Dear Mr. Tew:

This responds to your letter dated July 17, 1989, supplemented by your letter of July 24, 1989, requesting an advisory opinion on behalf of yourself and Ileana Ros-Lehtinen concerning application of the Federal Election Campaign Act of 1971, as amended, (the "Act") and Commission regulations to your proposed contribution to Mrs. Ros-Lehtinen's congressional campaign.

You explain that you are finance chairman for and counsel to Mrs. Ros-Lehtinen, a candidate for the special election to fill a vacancy in the U.S. House of Representatives from Florida's 18th Congressional District. After you submitted your advisory opinion request, Mrs. Ros-Lehtinen became the Republican nominee by winning her party's primary election, held on August 1st. Prior to the primary, you gave \$1,000 to her campaign. You propose to contribute an additional \$1,000 before August 15th, the date of the primary runoff election, in which the Democratic Party's congressional candidates will participate. Although Mrs. Ros-Lehtinen will not be on the ballot in the August 15th runoff election, you view your proposed contribution to her campaign as subject to the Act's contribution limits applicable to the runoff election and not to the limits applicable to the August 29th general election.

You ask whether the Act and Commission regulations permit you to give, and permit Mrs. Ros-Lehtinen to accept, you proposed \$1,000 contribution for the August 15th runoff election in which Mrs. Ros-Lehtinen will not participate.

In Advisory Opinion 1978-25 (May 1978), the Commission considered "whether a Senate candidate who is not on the ballot in a primary runoff election may nevertheless have the benefit

of a separate contribution limit with respect to a runoff election which is required between other Senate candidates opposing each other for the nomination of another political party." The Commission pointed out that the contribution limits of 2 U.S.C. 441a(a) govern contributions made "t any candidate and his authorized political committees with respect to any election for Federal office" For congressional candidates, each limitation of 441a(a) applies separately with respect to each election. 2 U.S.C. 441a(a)(6); 11 CFR 110.1(j)(1).

In this context, the Commission noted, the term "election" means "a general, special, primary, or runoff election." 2 U.S.C. 431(1)(A).

Commission regulations describe a "runoff election" as "[t]he election held after a primary election, and prescribed by applicable State law as the means for deciding which candidate(s) should be certified as a nominee for the Federal office sought" 11 CFR 100.2(d)(1). A "candidate" is "an individual who seeks nomination for election, or election, to Federal office" 2 U.S.C. 431(2); 11 CFR 100.3(a). In light of these definitions, the Commission stated that

[o]nce nominated for election to Federal office a candidate is no longer seeking nomination and therefore is not regarded as a candidate with respect to any runoff election prescribed by applicable State law to select another nominee for the same Federal office.

Accordingly, the Commission in Advisory Opinion 1978-25 concluded that "contributions to such a candidate may not be made with respect to a runoff election which, as to that candidate, is obviously immaterial to his or her selection as a nominee for the general election." See also Advisory Opinions 1983-39, 1982-49, and 1980-68.

The reasoning set out in Advisory Opinion 1978-25 would seem to resolve the issues you raise. You question this result, however. You call our attention to the recently revised 11 CFR 110.1(j)(3), part of a provision that explains how the limitations on contributions apply to elections. But paragraph (j)(3) concerns only primary and general elections. It governs contribution limitations for primary or general elections that are not held because of certain special circumstances.¹ Your inquiry, in contrast, concerns a runoff election. Mrs. Ros-Lehtinen participated in the primary election held as scheduled on contrast, concerns a runoff election. Mrs. Ros-Lehtinen participated in the primary election held as scheduled on August 1st. And she is a candidate in the general election set for August 29th. Therefore, 11 CFR 110.1(j)(3) is inapplicable to the situation you describe.

You also argue that if Mrs. Ros-Lehtinen's contributors can have no separate contribution limit for the "runoff period," Mrs. Ros-Lehtinen and her political party will be "unfairly disadvantage[d]." But candidates in a runoff election may incur expenses that a candidate who won her nomination in the previous election, the primary, does not incur. By establishing separate contribution limits for a runoff election and by permitting the participants in the runoff election to solicit funds to help defray their additional expenses, the Act and Commission regulations acknowledge the participants' special financial needs.²

Because Mrs. Ros-Lehtinen will not be on the ballot in the primary runoff election, the Commission concludes that you and Mrs. Ros-Lehtinen may not take advantage of the separate contribution limitations applicable to that election. Any contributions that you make in the period between the primary and the runoff will count toward your contribution limit for the general election.³

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,

(signed)

Danny L. McDonald
Chairman for the Federal Election Commission

Enclosures (AOs 1983-39, 1982-49, 1980-68, and 1978-25)

1/ 11 CFR 110.1(j)(3) states:

A primary or general election which is not held because a candidate is unopposed or received a majority of votes in a previous election is a separate election for the purposes of the limitations on contributions of this section. The date on which the election would have been held shall be the date of the election.

2/ The Commission notes that Mrs. Ros-Lehtinen may begin her general election campaign before the August 15th runoff election. In her general election campaign, she may use contributions that were made before the primary election, but that she did not need for the primary election, as well as contributions that were made with respect to the August 29th general election.

3/ If Mrs. Ros-Lehtinen has accepted donor-designated runoff election contributions from contributors who have not made their maximum allowable contributions for her general election campaign, her committee may use the contribution redesignation procedures set out in the Commission's regulations. See 11 CFR 110.1(b)(4), (b)(5) and 110.2(b)(4), (b)(5). In addition, if her primary election campaign has net debts outstanding and if any of her contributors have not previously "used up" their primary election limits, Mrs. Ros-Lehtinen may use the contribution redesignation procedures for her primary election debts. See 11 CFR 110.1(b)(3) and 110.2(b)(3). The reporting rules for redesignated contributions are found at 11 CFR 104.8(d)(2), (d)(3), and (d)(4).