



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 27, 1989

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1989-22

H. Daniel Holm Jr.
Ball, Kirk, Holm & Nardini, P.C.
3324 Kimball Avenue
P.O. Box 2696
Waterloo, Iowa 50704-2696

Dear Mr. Holm:

This responds to your letter dated September 11, 1989, on behalf of the Nagle Campaign Committee requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the retirement of debts owed by Representative David R. Nagle's 1988 campaign.

Your letter and statements filed with the Federal Election Commission indicate that Mr. Nagle has filed as a candidate for re-election in 1990 and that the Nagle Campaign Committee ("the Committee") has been designated as his principal campaign committee for the 1990 election cycle. Your letter states that the Committee has engaged in financial activity on behalf of Mr. Nagle's "primary election efforts for 1990." In addition, the Committee has assumed the debts incurred by the Nagle '88 Committee which was Mr. Nagle's principal campaign committee for the 1988 election cycle.

The Committee's July 31 mid-year report covering January 1 through June 30, 1989, indicates that on June 30 the total amount of outstanding debts from the 1988 general election is \$22,601.¹ According to the mid-year report, this amount includes a \$20,000 bank loan obtained in December 1988, with Mr. Nagle as guarantor for the full amount, to defray other outstanding debts from the 1988 general election campaign. The mid-year report also discloses that from January 1 through June 30, 1989, the Committee received contributions of \$15,850 to retire 1988 general election debts. The Committee also reports the receipt of contributions aggregating \$35,707 for the 1990 primary election.

You ask whether contributions made to the Committee for the 1990 primary election may be used to retire outstanding debts incurred by the 1988 Nagle committee for the 1988 "General and Primary elections." You also cite Advisory Opinion 1980-32 as precedent for permitting the described use of 1990 primary election contributions and ask whether your understanding of that opinion is correct.

The issue raised by your request is whether contributions made with respect to Mr. Nagle's primary election in 1990 may be lawfully spent at this time to retire outstanding debts from his 1988 election campaign.

The Act and Commission regulations recognize the somewhat frequent circumstances wherein an individual becomes a candidate for Federal office with respect to the upcoming primary election, having also been a candidate for the same office in the next preceding general election. See 2 U.S.C. 431(2), 432(e)(1); 11 CFR 100.3(b), 110.1(b)(2), (3), and (5). Such a "back-to-back" candidate status permits the acceptance of contributions with respect to the future primary election because the Act and Commission regulations provide that the contribution limits apply separately with respect to each election in which a candidate seeks nomination or election, or participates as an unopposed candidate. 11 CFR 110.1(j)(1)--(4); see 2 U.S.C. 441a(a)(6).

The fact that a candidate for the next election may have outstanding debts from the preceding election does not preclude fundraising for either the debt, the future election, or both, if done in compliance with the Act and Commission regulations.² In previous advisory opinions the Commission has concluded the use of campaign funds, contributed to a candidate's campaign committee with respect to a future election, to make expenditures for mandatory refunds or retiring debts incurred on behalf of the same candidate in connection with a prior election.

For example, in Advisory Opinion 1986-8 the Commission concluded that a 1986 candidate for the United States Senate could use contributions, made with respect to the 1986 election, to finance required refunds to persons whose contributions for his 1982 Senate general election campaign became unlawful after he lost the primary election. Similarly, in Advisory Opinion 1985-8, the Commission stated that a candidate's campaign committee could use contributions made for a 1986 election to refund unlawful contributions received, without knowledge of their illegality, by his 1982 campaign. The opinion cited in your request, Advisory Opinion 1980-32, also reflects the Commission's long-standing view that contributions lawfully made with respect to an election in which a candidate participates as a candidate may be spent, in the discretion of the candidate or his/her authorized campaign personnel, for the purpose of retiring outstanding debts from a previous election. See also Advisory Opinions 1987-4, 1988-5, 1986-12, 1981-9, and 1980-143.

This use of such contributions does not require that they be counted against the limits applicable to the previous election unless there are facts and circumstances indicating that the contributions were actually solicited to pay the debts remaining from the previous election, or that contributors gave to the current campaign with knowledge that the funds would be applied only to debt retirement. In addition, where the facts and circumstances demonstrate that a current campaign is merely a sham or subterfuge, whereby the candidate intends only to raise and spend funds to retire outstanding debts from a previous election and not to conduct an active campaign for the

next election, the Commission will presume that the contributions made in those circumstances were made to retire the debts of the past election. None of these circumstances are evident from this request and the Committee's most recent report.

The contributions and expenditures reflected on the Committee's mid-year report indicate that an active campaign for 1990 has begun. For example, the Committee reports several payments which total approximately \$4,000 to various individuals for 1990 campaign services. The Committee also reports contributions, apparently donor designated for 1988 primary and general election debts, as well as contributions made with respect to the 1990 primary election. The Committee's receipt of contributions attributed to any "unused" contribution limits from the 1988 election (to the extent of its 1988 debts) signifies that it expects to apply most of its 1990 election contributions to an active campaign, instead of to 1988 debt retirement.

Accordingly, based on the factual situation presented both in your request and reflected in the Committee's mid-year report, the Commission concludes that otherwise lawful contributions made to and accepted by the Committee with respect to the 1990 primary election may be used to retire 1988 primary and general election debts which were incurred by the Nagle '88 Committee and assumed by the Committee. All such contributions and expenditures, as well as the 1988 debts, are subject to the reporting requirements of the Act and Commission regulations.

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 1988-5, 1987-4, 1986-12, 1986-8, 1985-8 1981-9, 1980-143, 1980-32)

1/ The report does not disclose any outstanding debts from the 1988 primary election. The report also includes an outstanding debt of \$6,100 for "Polling" which was incurred in 1989 and is not identified as either a 1988 or a 1990 campaign debt.

2/ The regulations provide that contributions made to retire debts resulting from any election held after 1974 are subject to the contribution limits. 11 CFR 110.1(g). The regulations further require that contributions be designated for the retirement of outstanding debts from a past election if the contributor and the recipient committee wish to apply such contributions to the limits applicable to the election for which the debt incurred. 11 CFR 110.1(b)(3), 110.2(b)(3). The disclosure provisions of the Act and Commission regulations also require the continuous reporting of outstanding debts and obligations until paid or otherwise properly extinguished. 2 U.S.C. 433(d)(1), 434(b)(8); 11 CFR 104.3(d), 104.11.