



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 1, 1989

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1989-26

Trey Rogers
Dick Bond for Congress
P.O. Box 790
Greeley, Colorado 80632

Dear Mr. Rogers:

This responds to your letter dated September 14, 1989, which was received on October 19, 1989, and included prior letters as well as other documents, submitted on behalf of Dick Bond for Congress ("the Committee"). Your letters request an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use of a system for automatic fund transfers from a contributor's bank account to a Committee account.

You state that the Committee would like to solicit contributions that would be made by individuals on a monthly installment basis. With the cooperation of the Committee's bank and a contributor, you would set up a system whereby, on a predesignated date each month, a certain amount would be transferred from the contributor's bank account to the Committee's bank account. You indicate that you intend to keep records of cumulative totals with respect to these contributions. You state that the Committee will accept no transfers from corporate accounts or other accounts from which you could not accept contributions under 11 CFR 110.4, 114.2, and Part 115. With respect to accounts held by more than one person, you state that the Committee will meet the requirements of 11 CFR 110.1(k) as to joint accounts and reattribution and 11 CFR 110.1(1) as to supporting evidence.

You enclose a sample form, to be signed by the contributor, that would authorize the Committee to "initiate debit entries" to the contributor's checking account and would authorize the contributor's bank to debit the account. In filing out the form, the contributor would provide the name of his or her bank, the bank's "Transit/ABA number," and his or her account number. The agreement provides the option of two boxes to be checked for the amount of the monthly

withdrawal. The contributor may authorize a monthly withdrawal of \$15 or a monthly withdrawal of a different amount chosen by the contributor. The form also provides that the authorization would remain in effect through November, 1990, or until the Committee and its depository have received written notification from the contributor of the authorization's termination in sufficient time and manner to afford a reasonable opportunity to act on it.

You also enclose an agreement between the Committee and its campaign depository, Union Colony Bank, providing for the debiting of accounts of the contributors whose accounts are with member banks of the Rocky Mountain Automated Clearing House Association. The agreement requires that the Committee obtain the above-described form from all of the participating contributors. The agreement also requires that, before the initiation of any debit entries on behalf of the Committee to the accounts of its contributors, the Committee shall have sent notification, through Union Colony, to the Automated Clearing House ("ACH") for distribution to the member banks that hold accounts of contributors. This notification would explain that the Committee intends to request debits to the contributors' accounts, pursuant to their previously executed authorizations. The committee may then submit its requests for such debits no less than ten days after the prenotification has been transmitted by the ACH, unless any of the contributors' banks shall have sent their own notices to the ACH, for distribution to Union Colony, that the contributors' banks will not honor or perform the requested debit entries.

In the agreement, the Committee warrants to Union Colony that each requested debit entry is documented with an authorization executed by a contributor and held by the Committee. The Committee also warrants that, at the time a request for a debit entry is transmitted for collection, the Committee has no actual knowledge of the revocation or termination of the authorization by the contributor or by operation of law. The agreement also provides that the Committee will pay Union Colony a \$200 original set up fee, \$25 per month in handling fees, and \$.08 per entry.

The Act and Commission regulations define the term "contribution" to include a gift or "deposit of money" by any person for the purpose of influencing any election for Federal office. 2 U.S.C. 431(8)(A)(i). While the Act prohibits contributions of currency which, in the aggregate, exceed \$100, it does not require that contributions be made only by check or similar draft. See 2 U.S.C. 441g. The inclusion of "deposit of money" within the cited definition indicates that if otherwise lawful contributions are made in the form of bank deposits into the account of a political committee, the fact that a check is not used would not in itself preclude the contribution. Commission regulations do require that all contributions, whether made by check, money order, or other written instrument, be properly attributed to the actual donor.¹ 11 CFR 104.8(c) and (d)(1), and 110.1(k). This same attribution requirement, which is intended, in part, to assure compliance with another provision of the Act and Commission regulations that prohibits contributions by one person in the name of another person, would also apply to the deduction system you have proposed. See 2 U.S.C. 441f and 11 CFR 110.4(b)(1) and (b)(2).

The Commission has not previously considered a procedure involving monthly contributions by authorized deduction from the bank accounts of individuals whose contributions are thereby deposited in the bank account of a principal campaign committee. The Committee has, however, allowed contributions not involving a check to be made through properly documented use of the contributor's credit card. Advisory Opinion 1978-68; see also Advisory Opinion 1984-45.

Similarly, in the situation you present, the Commission concludes that nothing in the Act or Commission regulations precludes the implementation of your proposed contribution deduction system, provided that certain safeguards are followed.

You have stated that the Committee will keep records of the cumulative totals of contributions. The Act and regulations provide that, for contributions in excess of \$50, the Committee shall keep records of the name and address of the contributor and the date and amount of the contribution. 2 U.S.C. 432(c)(2); 11 CFR 102.9(a)(1). For contributions from any person aggregating more than \$200 during a calendar year, the Committee's records shall include the above information and the occupation and employer of the contributor. 2 U.S.C. 431(13) and 432(c)(3); 11 CFR 100.12 and 102.9(a)(2). In addition to the information provided, your contributor authorization form should also include the information enabling you to comply with the above requirements.

In order to report these contributions correctly, the Committee should take note of when it must itemize the contributions. When a contribution from an individual when added to his or her previous contributions exceeds \$200 for the calendar year, the Committee should disclose the name, address, occupation, and employer of the contributor, along with the date of receipt and the amount on the next report due. Each additional contribution from that individual should also be so itemized. 11 CFR 104.8(b). Although the Committee will be delivering its requests for debit entries to Union Colony no later than 15 days prior to the date the contributors' accounts are debited, the date of receipt of the contributions will be the date on which the Committee's account is credited with the funds debited from contributors' accounts. In this situation, that is the date on which the Committee's account will receive the funds.

Your proposal contemplates the continuance of deductions through November, 1990, i.e., up to the general election and, perhaps, beyond, if made on a November date after the general election. The authorization form, however, does not provide for the designation of contributions for the primary or the general election. If no such designation is made by the contributor in writing, the deductions will be considered contributions for the next election for that office. 11 CFR 110.1(b)(2)(ii). Therefore, according to the Commission's Explanation and Justification for regulations pertaining to designation, undesignated contributions are counted toward the primary election if made on or before that election, toward the general election if made after the primary date, and toward the next election if made after that. 52 Fed. Reg. 761 (January 9, 1987).² If the Committee chooses to have contributors designate the election in writing, such designation may be made on the deduction authorization form, or on an amendment to the form with respect to contributions made after the amendment is submitted, since the form or an amendment to it constitutes the writing that authorizes the making of the contributions. See 11 CFR 110.1(b)(4).

Because your contributor authorization form for debit entries states that such entries may continue through November 1990, the Commission points out the applicability of its regulations pertaining to contributions designated for a particular election, restrictions on contributions after the primary if the candidate is not running in the general election, and the required redesignation and reattribution of contributions in some circumstances. 11 CFR 110.1(b)(3), 110.1(b)(5), and 110.1(k); see Advisory Opinion 1988-41. You should note, depending upon the factual situation, these rules may require the Committee to terminate the program after the primary if Mr. Bond is

not a candidate in the general election. For example, if Mr. Bond is not a candidate in the general election, all contributions made for the general election will have to be returned or refunded to the contributors, or reattributed or redesignated as appropriate, to the extent that is permissible without exceeding the Committee's net primary debts and without exceeding the limit of 2 U.S.C. 441a.

The expenses of Union Colony Bank, an incorporated entity, in providing services facilitating this program would be a prohibited contribution by the bank, if uncompensated. 2 U.S.C. 441b(a); 11 CF 114.2(b). The agreement between Union Colony and the Committee provides for payment by the Committee to the bank for the establishment of the program and for the costs of the continuing deductions. The Commission conditions its opinion on the assumption that the charges listed in the agreement are not less than the usual and normal charges for the services provided. 11 CFR 100.7(a)(1)(iii)(A). See Advisory Opinion 1978-68.

In keeping with the underlying concept of your proposal--a contribution is made each month in the actual amount of the monthly withdrawal (and not in any cumulative amount, or projected value, at the time of the authorization)--the ability of the contributor to revoke his or her deduction authorization must be made clear. Such ability is explicitly referred to on the sample deduction authorization form and is also recognized in the agreement between the Committee and Union Colony. In addition to stating that the request will remain in effect until Union Colony and the Commission have received written notification of revocation in a manner affording "a reasonable opportunity to act on it," the Committee should also state on the deduction authorization form what it considers to be a reasonable time to act on a revocation request, perhaps with specific reference to terms of the agreement with Union Colony. In order to further ensure the contributor's control over the funds and his or her ability to revoke the authorization, the Committee should provide refunds to those contributors who inform the Committee of the desire to revoke before the next scheduled transfer of funds from the contributor's account, but after the deadline for a "reasonable" opportunity to act on the request. Cf. 11 CFR 110.1(b)(6).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 1988-41, 1984-45, and 1978-68)

1/ Compare the regulations applicable to presidential candidates who qualify for matching Federal funds. These regulations require that matchable contributions be made on a written, negotiable instrument. 11 CFR 9034.2(a)(1), (b), and (c).

2/ Under the Commission's regulations, a contribution is considered "made" when the contributor relinquishes control. 11 CFR 110.1(b)(6). In the situation you propose, the Commission would view the date a contributor's account is debited as the date the contribution is made.

3/ The Commission notes that any dispute with reference to the effective date of a contributor's notice of revocation to the Committee, or the Committee's forwarding such notice to Union Colony, is subject to State law and generally outside the purview of the Act except to the extent that such circumstances raise any issues with regard to the making of an unlawful contribution by the contributor's bank or Colony Bank. See 2 U.S.C. 441b.