



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

February 16, 1990

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1990-2

James J. Flannery, Treasurer  
Committee to Re-Elect Congressman Chris Smith  
217 Hancock Avenue  
Bridgewater, NJ 08807

Dear Mr. Flannery:

This responds to your letter dated January 4, 1990, requesting an advisory opinion on behalf of the Committee to Re-Elect Congressman Chris Smith ("the Smith Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use of a Certificate of Deposit purchased by the Smith Committee to guarantee a loan taken out by a local party committee.

You state that the Monmouth County Republican Committee ("the County Committee"), a local party campaign fund not registered with the Commission, has requested the Smith Committee to collateralize a loan it is negotiating with a bank. The bank will require that the Smith Committee deposit up to \$20,000 in a Certificate of Deposit with the bank. You state that the CD will be released as collateral when the County Committee repays the loan, the "initial term" of which is not expected to exceed six months. You state that the CD will bear a fair rate of interest payable to the Smith Committee. According to your request, the \$20,000 used by the Smith Committee to purchase the CD are excess campaign funds from the 1988 Congressional elections.<sup>1/</sup> You ask whether the Act permits the Smith Committee to engage in this transaction.

The Act and Commission regulations provide that excess campaign funds may be used for several purposes, including transfers without limitation to any national, State, or local committee of any political party. 2 U.S.C. 439a; 11 CFR 113.2(c). "Excess campaign funds" are defined as amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures. 11 CFR 113.1(e). According to its 1988 Post-General Election Report, the Smith Committee had \$75,434 cash on hand with no debts owed by it.<sup>2/</sup> Assuming you have determined that the purchase of the \$20,000 CD as a loan

guarantee for the County Committee can be made from Smith Committee funds that are no longer needed to defray Congressional campaign expenses for the 1988 elections, that sum would qualify as excess campaign funds. See Advisory Opinion 1984-50.

According to the Act and Commission regulations, a loan is a contribution by each endorser or guarantor to the extent of the portion of the loan for which the guarantor agreed to be liable in a written agreement. 11 CFR 100.7(a)(1)(i)(C). A loan of excess campaign funds to a party committee by a Federal officeholder's principal campaign committee is considered a transfer permissible without limit under 2 U.S.C. 439a. Advisory Opinion 1981-17. Analogously, the Smith Committee's purchase of the CD, as a loan guarantee, enables the County Committee to obtain a bank loan and, for the purposes of 2 U.S.C. 439a, should be treated as a transfer of funds for the benefit of the County Committee. As such, the purchase of the CD by the Smith Committee would be a permissible use of its funds on behalf of a political party committee.<sup>3/</sup>

The Commission expresses no opinion regarding the possible application of House rules to the proposed activity, since those rules are outside the Commission's jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act or regulations prescribed by the Commission to the specific transactions or activities set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Lee Ann Elliott  
Chairman for the Federal Election Commission

Enclosures (AOs 1984-50 and 1981-17)

1/ You also assert that the Smith Committee's only involvement in the transaction is to provide collateral for the loan. All provisions pertaining to repayment, interest rates, and the term of the loan "have been independently negotiated" by the bank and responsible members of the County Committee.

2/ The most recent report filed by the Smith Committee, which has been the principal campaign committee of Congressman Smith for both the 1988 and 1990 elections, discloses \$82,605 cash on hand with no debts owed by the committee.

3/ The Commission notes that the Smith Committee will have disclosure obligations with respect to the CD purchase. The committee will have to report, on a Schedule A for "other receipts," the receipt of interest earned on the CD and the bank granting the interest. 11 CFR 104.3(a)(4)(vi). The committee will also have to amend its Statement of Organization to include the name of the bank as a depository of committee funds. 11 CFR 102.2(a)(1)(vi) and (2). The committee will not have to report the paying out of funds for the purchase of the CD. The funds are still a committee asset, included in cash on hand. 11 CFR 104.3(a)(1).