



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 24, 1990

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1990-15

Kenneth B. Kramer
1400 S. Joyce Street--C108
Arlington, VA 22202-1812

Dear Mr. Kramer:

This refers to your letter dated July 11, 1990, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the administrative termination of "Ken Kramer '86" which was your principal campaign committee in the 1986 election cycle for the United States Senate in Colorado.

Your letter states that Ken Kramer '86 ("the Committee") has been reporting since 1985 when you began your 1986 Senate campaign but that you are not currently a candidate for any elective office. You also state that the Committee has resolved "all creditor issues" except one disputed debt involving Kenneth D. Bailey, doing business as Direct Marketing Resources ("DMR"). Your position is that no debt is owed to DMR or Mr. Bailey. In an attempt to settle DMR's asserted claim of \$24,304 and without admitting any liability, you tendered a Committee check in the amount of \$2,000 in February 1989.

Your proposed settlement was apparently rejected by Mr. Bailey who, by letter from his counsel dated June 27, 1989, did offer to settle his claim against the Committee for \$17,939. This letter also references a civil complaint that counsel for Bailey and DMR proposed to file in King County Superior Court, Washington, in the event you declined to accept his settlement. You responded by letter dated July 18, 1989, to Chuck Bailey (Ken Bailey's father and business associate) stating that you hoped "we can still settle this matter on a reasonable basis." This letter further explained that Ken Bailey's proposed settlement of about "\$18,000 is just not in the ballpark."

Your request includes copies of ten letters concerning this disputed debt from or on behalf of Mr. Bailey, and from you to Mr. Bailey, beginning in December 1986. Nine of the letters are dated in

1988 and 1989. Several letters make reference to telephone conversations and personal meetings involving you, your campaign staff, and both of the Baileys in the same time period. Taken together they indicate a fairly protracted effort of exchanging information and explanations to ascertain the relevant facts regarding the campaign services provided by Bailey and DMR and their debt claim against the Committee.

Committee reports filed with the Commission indicate that this disputed debt claim by DMR is the only unsettled obligation of the Committee. The 1989 year end report also discloses that the Committee had receipts of \$2,375 and disbursements of \$3,154 in 1989. As of December 31, 1989, the Committee reported \$8,401 of cash on hand. For the first six months of 1990, the Committee reports \$270 in receipts, \$630 in disbursements, and cash on hand of \$8,043 on June 30, 1990.

You explain that the Committee's continued filing with the Commission imposes "significant difficulties on a defunct Committee" and that "as long as the Committee remains open, it is also necessary for it to pay federal income tax and file a return with the Internal Revenue Service." You ask whether the Act and Commission regulations permit the Commission to administratively terminate the Committee's reporting obligations in view of the circumstances presented in your request and summarized above. You also ask what effect, if any, the running of the Colorado statute of limitations has upon the administrative termination of the Committee.

Several provisions of the Act and Commission regulations are relevant to your questions. First, the amount of outstanding debts and obligations owed by a political committee must be continuously reported until extinguished by either payment in full, or by lawful settlement subject to review by the Commission. 2 U.S.C. 434(b); 11 CFR 104.3(d), 104.11, 114.10. Furthermore, a political committee may terminate its reporting status only upon filing a termination report or statement indicating that it will no longer receive any contributions or make any disbursement, and that it has no outstanding debts or obligations. 2 U.S.C. 433(d)(1), 11 CFR 102.3.

The Act also recognizes that the Commission has authority to terminate the reporting status of a political committee by administrative decision even if it still has unpaid debts and obligations. 2 U.S.C. 433(d)(2). The legislative history of this provision of the Act, which was added by the Federal Election Campaign Act Amendments of 1979, 93 STAT. 1348, indicates that it provides the Commission with "authority to determine that a committee will not be able to pay its outstanding debts...and, thereby, terminate the committee's reporting obligation." H.R. Rep. No. 96-422, 96th Cong., 1st Sess. 15 (1979).

By regulation the Commission has set out eight factors that give the basis on which it will unilaterally, or by request of a political committee, terminate a committee's future reporting obligation. 11 CFR 102.4(a). The factors are:

- (1) The committee's aggregate reported financial activity in one year is less than \$5,000;
- (2) The committee's reports disclose no receipt of contributions for the previous year;

- (3) The committee's last report disclosed minimal expenditures;
- (4) The committee's primary purpose for filing its reports has been to disclose outstanding debts and obligations;
- (5) The committee has failed to file reports for the previous year;
- (6) The committee's last report disclosed that the committee's outstanding debts and obligations do not appear to present a possible violation of the prohibitions and limitations of 11 CFR Parts 110 and 114;
- (7) The committee's last report disclosed that the Committee does not have substantial outstanding accounts receivable;
- (8) The committee's outstanding debts and obligations exceed the total of the committee's reported cash on hand balance.

A review of the materials submitted as part of your request, and the Committee's recent FEC reports, indicates that the Committee has satisfied nearly all of the quoted eight factors.

Factor (1): The reported aggregate financial activity for the 12 month period from July 1, 1989, through June 30, 1990, is a total of \$1,169 in combined receipts and disbursements.

Factor (2): The Committee's reported receipts for the 12 month period ending June 30, 1990, are \$683 of bank interest with no reported contributions.

Factor (3): The Committee's reported disbursements on the last report filed covering the first six months of 1990 are \$630.

Factor (4): The Committee's reports covering the 12 month period ending June 30, 1990, do not itemize any outstanding debts or obligations owed by the Committee. It previously reported, and has separately acknowledged, a disputed claim by DMR and Mr. Bailey of approximately \$24,000.

Factor (5): The Committee has filed reports for the previous year. As indicated by this request, however, the Committee has continued to file reports only because it assumed that the Act required such filings and because its efforts beginning in 1986 to settle one unpaid, disputed debt have not been successful. The Commission views this factor as inapplicable to instances such as this when administrative termination is requested by a political committee that has maintained its reporting status.

Factor (6): In determining whether a committee's outstanding debts and obligations appear to present a possible violation of the prohibitions and limitations of 11 CFR Parts 110 and 114, the Commission will consider: (1) whether the initial extension of credit was made in the "ordinary course of business" and on terms "substantially similar to extensions of credit to nonpolitical debtors which are of similar size and risk of obligation"; (2) whether the committee undertook "all commercially reasonable efforts to satisfy the outstanding debt"; and (3) whether the creditor "pursued its remedies in a manner similar in intensity to that employed...in pursuit of a non-political debtor, including lawsuits if filed in similar circumstances." See 11 CFR 114.10(c) [debt settlement regulations].^{1/} While the Committee's last report does not disclose any outstanding debt owed to DMR or Mr. Bailey or any other person, the information submitted in the request

for administrative termination may have relevance to the issue of whether the circumstances surrounding the disputed debt present a possible violation of the limits and prohibitions of the Act.^{2/} DMR clearly believes the disputed amount is due and owing, and DMR by counsel has pressed its claim to the point of preparing court pleadings to file suit against you or the Committee or both. Accordingly, the likelihood of a "sweet" or "friendly" arrangement between DMR and the Committee is very small. With regard to the extension of credit by DMR at the outset of its relationship with the Committee, the request does not offer complete information.

Factor (7): The last report of the Committee does not disclose any accounts receivable of, or debts owed to, the Committee.

Factor (8): The disputed amount claimed by DMR and Mr. Bailey, which is \$24,304, exceeds the reported cash on hand of the Committee which is \$8,043.

As the foregoing analysis indicates, the Committee has fully satisfied all eight factors for administrative termination with the possible exception of factor (6). With respect to factor (6), the information provided in the request would not pose any issue regarding the prohibitions of 11 CFR Part 114 if DMR is not a corporation. Its corporate status is unclear based on the materials submitted in the request.

On the basis of the foregoing discussion, the Commission concludes that the Committee may qualify for administrative termination if it applies for such and submits further information so the Commission can review the Committee's compliance with factor (6). The application for administrative termination should be made by letter to the Assistant Staff Director for the Reports Analysis Division at the Commission.

You have posed the question as to the effect of the Colorado statute of limitations on your requested administrative termination. The Commission notes that the application of that statute relates to the enforceability of DMR's debt claim in Colorado courts and not to application of the Act and Commission regulations.^{3/} Although the running of the statute of limitations would not, by itself, remove the Committee's reporting obligations, see Advisory Opinion 1988-44, it might nonetheless be an additional factor considered by the Commission in reviewing a request for administrative termination.

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)

Lee Ann Elliott
Chairman for the Federal Election Commission

Enclosures (AOs 1989-2, 1988-44, and 1975-102)

1/ These considerations may be modified when dealing with disputed debts as opposed to Commission review of debt settlements. For example, consideration (2), whether the committee undertook "all commercially reasonable efforts to satisfy the outstanding debt," would be modified to review what actions the committee undertook to resolve the disputed debt.

2/ There is, however, a factual issue as to DMR's corporate status; it may instead be a partnership or other type of business entity. DMR's counsel and Mr. Bailey apparently believe that DMR is a corporation, but one of your letters explains that your inquiry to the secretary of state in the State of Washington indicated that DMR is not recognized as a corporation in that state's records.

3/ The Commission has taken the position since 1975 that state law governs whether an alleged debt exists, its amount, and which persons or entities are liable on the debt. Advisory Opinion 1989-2 citing Advisory Opinion 1975-102; see also Advisory Opinion 1988-44.