



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 21, 1990

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1990-17

Jim Swain, Treasurer
Dennis R. Rehberg, Campaign Manager
Conrad Burns/U.S. Senate
P.O. Box 3311
Billings, MT 59103

Dear Messrs. Swain and Rehberg:

This responds to your letter dated August 8, 1990, requesting an advisory opinion on behalf of Conrad Burns/U.S. Senate ("the Burns Committee") and Jim Swain, as treasurer, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the receipt and disbursement of funds by the Burns Committee for legal representation with respect to a Commission enforcement matter.

You state that the Burns Committee and Mr. Swain plan to retain legal counsel to represent their interests in connection with a complaint filed with the Commission on or about July 10, 1990. You state that the complaint pertains solely to activities that allegedly took place in connection with the 1988 election cycle. You wish to know whether the expenses of retaining an attorney under those circumstances will be attributable to the 1988 campaign and whether the campaign will be permitted to raise funds attributable to the 1988 campaign to cover the legal expenses.

You state that "all other debts and expenses of the 1988 campaign have been paid, that no funds remain from that campaign, and a final report has been filed." A review of Burns Committee filings does not disclose a termination report. Instead, the Committee has been redesignated as the principal campaign committee for Senator Burns' reelection effort in 1994. A review of the reports of the Burns Committee indicates that it has paid all previous debts from the 1988 elections.

According to the Act and Commission regulations, the term "contribution" means a gift, subscription, loan, advance, or deposit of money made for the purpose of influencing any

election for Federal office. 2 U.S.C. 431(8)(A)(i), 11 CFR 100.7(a)(1). Excepted from this definition are:

any legal or accounting services rendered to or on behalf of—

(II) an authorized committee of a candidate or any other political committee, if the person paying for such services is the regular employer of the individual rendering such services and if such services are solely for the purpose of ensuring compliance with this Act or chapter 95 or 96 of title 26.

2 U.S.C. 431(8)(B)(ix). See also 11 CFR 100.7(b)(14).

Although the donation of legal services solely to ensure compliance with the Act would be exempt from the definition of contribution, i.e., where the regular employer of the person rendering such services donates that person's time to the committee, the Act and regulations provide no exception for the donation of money to defray the costs of such services. Advisory Opinions 1981-16 and 1977-5. In addition, the costs of legal representation with respect to post-election compliance matters relating to that election emanate from activities clearly within the scope of the Act. Advisory Opinion 1981-16. See also Advisory Opinion 1989-10. Donations to defray such costs, therefore, would be contributions subject to the limits and prohibitions of the Act.

Commission regulations limit the contributions that an authorized committee may accept with respect to an election already held. An authorized committee may accept contributions made after the date of the election if such contributions are designated in writing by the contributor for that election, but only to the extent such contributions do not exceed the amount of net debts outstanding from such election. 11 CFR 110.1(b)(3)(i).^{1/} The net debts outstanding from a particular election are defined as the total unpaid debts and obligations incurred with respect to a particular election (including the estimated cost of raising funds to liquidate such debts) minus cash on hand and receivables available to pay those expenses as of the date of the election. The amount of net debts outstanding is to be adjusted after the date of election according to the receipts, disbursements, and other changes in debts or receivables that arise after the election. Contributions may be accepted if they do not exceed the adjusted amount of net debt outstanding on the date the contribution is received. 11 CFR 110.1(b)(3)(ii), (iii); Explanation and Justification of 11 CFR 110.1(b)(3)(ii), (iii), 52 Fed. Reg. 762 (January 9, 1987).

Although the Burns Committee reports do not precisely depict its debt situation as of the date of the election, both the post-general and year end reports for 1988 disclose debts and obligations owed by the committee which exceed the amount of cash on hand. The amended post-general report discloses \$60,074 in cash on hand with \$140,173 in debts owed by the committee. The amended year end report discloses \$23,477 in cash on hand with \$38,922 owed by the committee. Both reports disclosed that there were no funds receivable. It thus appears that, at the time of the 1988 general election, the Burns Committee did not have enough cash on hand and receivables to pay even its debts at the time, let alone the now-anticipated legal costs.

The Burns Committee may, therefore, receive contributions to defray the costs of legal representation in the compliance matter. Such contributions must be designated in writing by the donors for the 1988 general election. Since all other debts and expenses for 1988 have been paid, and assuming that no funds remain from that campaign, donor-designated contributions may be received only to the extent necessary to defray the legal costs. If contributions in excess of this amount are received, the treasurer shall return or deposit the contribution within ten days of his or her receipt and, if the contribution is deposited, refund the contribution or obtain a written redesignation or reattribution (in combination with redesignation) from the contributor in accordance with 11 CFR 110.1(b)(3)(i). In addition, the contributions accepted, when aggregated with other contributions made by the same donors for the 1988 general election, must not exceed the limits of 2 U.S.C. 441a. 11 CFR 110.1(b), 110.1(g).

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 1989-10, 1981-16, and 1977-5)

1/ Regulations applicable to contributions by multicandidate political committees include the same requirements. 11 CFR 110.2(b)(3)(i). Also, see generally 11 CFR 110.2(b), 110.2(g).