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September 25, 1990

HAND DELIVERED

Lawrence M. Noble, Esquire  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

AOR 1990-23

90 SEP 25 AM 11:34

Re: Request for Advisory Opinion

Dear Mr. Noble:

On behalf of Representative Martin Frost, I request an advisory opinion pursuant to 11 CFR Part 112.

Facts

Rep. Frost anticipates that he may be affected by the redistricting of the Texas congressional districts following the 1990 census. In order to protect his interests, he has retained counsel to advise him on this matter and, if the need arises, to represent him in future redistricting litigation.

Rep. Frost intends to pay the attorneys fees for this representation, and if necessary, for the services of other related experts, such as demographers and statisticians, from his authorized federal campaign committee, the Martin Frost Campaign Committee.

The Commission has, on multiple occasions, ruled that donations made to Members of Congress for the purpose of defraying legal expenses in connection with reapportionment matters are not subject to federal campaign finance limitations and source restrictions. A.O. 1982-37, 1 CCH Fed.Elec.Camp.Fin. Guide Para. 5677 (May 27, 1982); A.O. 1982-14, 1 CCH Fed.Elec.

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Camp.Fin.Guide Para. 5655 (April 9, 1982); A.O. 1981-19, 1 CCH  
Fed.Elec.Camp.Fin.Guide Para. 5619 (Sept. 24, 1981)...

Accordingly, Rep. Frost seeks an advisory opinion on whether the Frost Committee can establish a separate segregated account to receive and disburse funds solely in connection with reapportionment matters. Consistent with the rulings previously made by the Commission, the funds to be received in this account would not be subject to federal limitations and restrictions. These funds would be strictly segregated from all other funds raised and spent by the Frost Committee. There would be no transfers of funds from the reapportionment account to the campaign account. The Committee would comply with all of the federal reporting requirements set forth in 11 CFR Part 104 for the funds in the segregated reapportionment account.

#### Discussion

Rep. Frost seeks advisory permission to establish a separate segregated account within his authorized campaign committee and to use the funds in that account to pay for expenses associated with protecting his political and legal interests in the Texas redistricting process.

Under the trilogy of prior Commission rulings cited above, there is no question that Rep. Frost can accept donations of funds for use in connection with redistricting matters, without regard to federal limits and source restrictions. Thus, the central issue here is whether such funds may be deposited into and disbursed from a separate segregated account of his federal campaign committee.

The Commission has already approved such a procedure in a closely related context. In A.O. 1982-14, supra, the second of the Commission's reapportionment opinions, a state party committee which engaged in federal campaign activity asked whether it could "establish a separate segregated account to receive and disburse funds for the purpose of influencing the Congressional reapportionment activities of the State Legislature."

The Commission said it could. Relying on the first of its reapportionment opinions, A.O. 1981-35, supra, the Commission said that "the influencing of the reapportionment decisions of a state legislature, although a political process, is not considered election-influencing activity subject to the requirements of the [Federal Election Campaign] Act." The Commission then held:

Accordingly, based upon your representations that the Committee intends to use the funds accumulated in the separate account solely to finance reapportionment-related activity, the Commission concludes that receipts and disbursements from the reapportionment account would not constitute contributions or expenditures under the Act.

Emphasis added.

The Commission conditioned its approval on the committee "not using any of the funds contained in the reapportionment account to finance any election advocacy...." And it noted that "none of the funds donated to the reapportionment account...may be transferred to a Committee account which is used in connection with a Federal election." Within these limits, however, the Commission approved the committee's establishment of a separate segregated fund to receive donations, including donations otherwise in excess of federal contribution limits or from sources otherwise prohibited by federal law, for the purpose of financing reapportionment-related activity.

This opinion is virtually indistinguishable from the facts posed by the request which we now make, and provides firm precedent for approving the procedure proposed by the Frost Committee. The state party committee in A.O. 1982-14, like the Frost Committee, was a federally registered committee, which conducted federal campaign activity, and raised and spent federally regulated funds. Nonetheless, the Commission expressly approved that committee establishing within it a separate account to raise and spend donations for reapportionment-related activity, even though such donations would not be subject to federal limitations and restrictions. The Frost Committee here seeks permission to do precisely the same.

This reasoning was confirmed in the last of the three advisory opinions, A.O. 1982-37, supra. There the Commission approved a Member's acceptance of non-federal funds for reapportionment purposes "conditioned on the strict segregation of any donations received for the purpose of reapportionment related activity and contributions otherwise received by you or your authorized campaign committee to finance election-influencing activity." Rep. Frost proposes to comply fully with this segregation requirement by strictly separating all donations received for reapportionment related activity in a separate account that will contain no campaign-related funds. All

expenditures for reapportionment-related activities will be made from this segregated account. No campaign-related expenditures will be made from the account containing reapportionment-related funds nor, as noted above, will there be any transfers from the reapportionment account to the campaign account.

In broad terms, this proposal is analogous to the familiar arrangement for a federal committee which conducts both federal and non-federal campaign activities. Under the Commission's regulations, a federal committee is permitted to establish separate federal and non-federal accounts. 11 CFR 102.5(a)(1)(i). Only federally permissible funds may be deposited in the federal account, while funds which do not comply with federal restrictions may be deposited in the committee's non-federal account. Id. at 102.5(a)(2).

So too here, the Frost Committee's federal account would continue to receive only funds subject to all federal restrictions and limitations. All campaign activity would be conducted from this account. The Committee's segregated reapportionment account would receive funds not subject to federal restrictions, and all reapportionment-related activity would be funded from that account. The Committee would report all activity in both accounts.

There is also precedent for this arrangement in a different but analogous area. Under 11 CFR 100.7(b)(20) and 100.8(b)(20), donations made with respect to the recount of a federal election are not contributions or expenditures, and thus the usual contribution limitations do not apply." To this extent, the Commission's treatment of donations raised to fund recount contests is analogous to its treatment of donations raised to fund reapportionment contests.

In A.O. 1978-92, 1 CCH Fed.Elec.Camp.Fin.Guide Para. 5374 (Nov. 22, 1978), the Commission held that a candidate's federal campaign committee may establish a segregated bank account to receive donations and make disbursements for recount purposes. The Commission ruled that the receipts and disbursements of such an account would be reportable transactions of the federal committee, and any bank depository of such funds must be disclosed on the committee's Statement of Organization. All donations of recount funds -- even though such funds are not considered to be "contributions" and thus not subject to any

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1/ The regulations expressly state, however, that the source restrictions of Part 114 do apply.

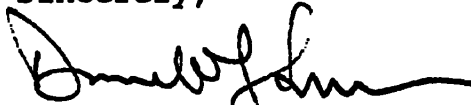
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contribution limits -- are to be reported by the committee as "other receipts." Similarly, all disbursements from the account -- even though not considered to be "expenditures" -- must be reported as disbursements.

Thus, the Commission has granted special treatment to both funds raised for reapportionment expenses and funds raised for recount expenses. In neither case do such funds constitute federal contributions or expenditures. The Commission has already allowed a federal committee to establish a segregated bank account to receive and disburse recount funds, so long as all transactions are reported. Rep. Frost now seeks permission to follow an identical procedure with regard to reapportionment funds.

Please contact me if you require further information regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald J. Simon", with a long horizontal flourish extending to the right.

Donald J. Simon

DJS/cmt