



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 5, 1990

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1990-23

Donald J. Simon
Sonosky, Chambers & Sachse
1250 Eye Street, N.W.
Suite 1000
Washington, D.C. 20005

Dear Mr. Simon:

This refers to your letter dated September 25, 1990, requesting an advisory opinion on behalf of Representative Martin Frost of Texas concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the receipt by his principal campaign committee of funds to be used for expenses related to the redistricting of Texas Congressional districts.

Representative Frost anticipates that he may be affected by the redistricting of 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 necessary, to represent him in future redistricting litigation. Mr. Frost intends to have his authorized campaign committee, the Martin Frost Campaign Committee ("the Frost Committee"), pay for the services of the attorneys and, if necessary, the services of other experts such as demographers and statisticians.

You state that Mr. Frost proposes to have the Frost Committee establish a "separate segregated account" to receive and disburse funds solely in connection with reapportionment matters. The funds would not be subject to the limitations and prohibitions of the Act. You state that no campaign-related expenditures would be made from this account and there would be no transfers of funds from the reapportionment account to the campaign account. You further state that, with respect to the reapportionment account, the Frost Committee would comply with all of the reporting requirements of the Act.

Mr. Frost wishes to know whether such a reapportionment account may be set up within the Frost Committee to pay for "expenses associated with protecting his political and legal interests in the Texas redistricting process."

The Commission has approved proposals for the establishment by candidates or officeholders of separate entities that are established exclusively for activity related to redistricting. Such entities were permitted to receive funds that were not subject to the limitations and prohibitions of the Act. In approving such proposals, the Commission has stated that the influencing of reapportionment decisions, although a political process, is not considered election-influencing activity subject to the requirements of the Act. Advisory Opinions 1982-37 and 1981-35. The Commission has also approved the establishment by a State party committee of a separate account to receive and disburse funds for the purpose of influencing reapportionment activities. Advisory Opinion 1982-14. The Commission, however, has not previously considered any proposal to permit an authorized committee of a candidate to establish a separate reapportionment account.

You have indicated your view that your proposed arrangement is analogous to that of a committee that conducts Federal and non-Federal campaign activities and establishes separate accounts. The Commission notes, for example, that the establishment by a state party committee of a separate account within the party organization for purposes that do not include the support of Federal candidates or political committees is explicitly permitted by Commission regulations. Section 102.5(a)(1) provides that organizations that are political committees under the Act and which finance political activity in connection with both Federal and non-Federal elections could either (i) establish one account for Federal purposes which complies with all requirements of the Act and establish other non-Federal accounts that may not make transfers to the Federal account; or (ii) establish one account for both Federal and non-Federal activity which complies with the Act's requirements regardless of the type of activity in which it engages. 11 CFR 102.5(a)(1). By contrast, the Act and Commission regulations make no such provision for political committees that are authorized committees of candidates. A principal campaign committee or authorized committee, by definition, is established and operated only to receive funds for the purpose of influencing the election of its authorizing candidate.^{1/} See 2 U.S.C. 432(e)(1) and (e)(3).

Commission regulations place restrictions on the receipt of funds by a Federal officeholder. All funds donated to a Federal officeholder must be deposited into either: (a) an account of the officeholder's principal campaign committee or other authorized committee pursuant to 11 CFR Part 103; or (b) an account to which only funds donated to an individual to support his or her activities as a holder of Federal office are deposited (including an office account). 11 CFR 113.3. See 11 CFR 113.1(b). Part 103 provides for the establishment of committee accounts, for the receipt into such accounts of funds permissible under the Act, and for the timely return of impermissible funds. 11 CFR 103.3.

The Commission applied the restrictions of 11 CFR 113.3 in considering whether the principal campaign committee of a Congressman-elect may raise additional funds for his office-related expenses and those of his "administrative staff" that were incurred between the election and his swearing-in ceremony. Advisory Opinion 1982-57. Despite the fact that the expenses incurred by the committee were not for the purpose of influencing a Federal election or in connection with a

Federal election, the Commission did not allow for any alternative "segregated" account within the political committee.^{2/} The Commission concluded that the committee, in order to pay for the expenses, could continue to receive contributions and make disbursements or expenditures, subject to the provisions of the Act and Commission regulations. If the committee received contributions aggregating in excess of \$5,000, such receipts would result in candidacy status for the next election if the contributions were not designated for outstanding debts from the next preceding election. The Commission also noted the alternative of an office account under 11 CFR 113.3.^{3/}

The Commission concludes, therefore, that the Frost Committee may not set up a separate segregated reapportionment account to receive funds that are prohibited or beyond the limitations set out by the Act. Nothing in this opinion should be construed to prohibit Mr. Frost from setting up a fund or entity, independent of the Frost Committee, for the purposes of paying expenses related to redistricting or reapportionment.^{4/} In addition, the Frost Committee may use the contributions it lawfully receives, in accordance with the Act and Commission regulations, for the reapportionment expenses you describe. Payments by the Frost Committee from such contributions should be reported as disbursements. Advisory Opinion 1981-58.

The Commission expresses no opinion regarding application of any State law to the proposed activity, nor as to any possible tax ramifications, since those issues are outside its jurisdiction. For the same reason, the Commission expresses no opinion as to possible application of the House rules to the proposed activity.

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 1985-38, 1982-57, 1982-37, 1982-14, 1981-58, 1981-35, and 1978-92)

1/ The Act and Commission regulations expressly permit certain other activities of a principal or authorized campaign committee such as defraying "ordinary and necessary expenses incurred in connection with the recipient's duties as a holder of Federal office," and making limited contributions to other Federal candidates. 11 CFR 113.2(a), 102.12(c)(1) and (c)(2).

2/ The Commission notes your reference to an advisory opinion in which it approved an authorized committee's proposal to establish a bank account to receive donations and make disbursements with respect to a vote recount, provided that receipts and disbursements were properly reported and that the account did not receive funds prohibited under Part 114. Advisory Opinion 1978-92. That opinion was premised, however, on specific provisions of the

Commission regulations exempting payments for recounts from the definition of contribution or expenditure, but prohibiting payments from sources prohibited under Part 114. 11 CFR 100.7(b)(20) and 100.8(b)(20). (Since 1980, the regulations have also prohibited payments from foreign nationals.)

3/ It should be further noted that Commission regulations provide that, if any treasury funds of a corporation or labor organization are donated to an office account, no funds from that account may be transferred to a political committee account or otherwise used in connection with a Federal election. The Commission notes the bar to prohibited funds being sent to the political committee, regardless of the use of the recipient account. 11 CFR 113.4(b).

4/ The Commission cautions that the name and activities of such an entity may raise issues as to the purpose of its receipts and disbursements. Although a reference to Congressman Frost in the name of the fund would not by itself indicate a purpose of influencing or a connection with a Federal campaign, references to his candidacy would be viewed as something of value to his Federal campaign, and other references to him may or may not result in a contribution to his campaign, depending on all the facts and circumstances in a given situation. Advisory Opinion 1985-38.