FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 18, 1991

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1990-27

Ralph G. Elliot
Tyler, Cooper & Alcorn
City Place
35th Floor
Hartford, CT 06103-1216

Dear Mr. Elliot:

This responds to your letter dated November 26, 1990, requesting an advisory opinion on behalf of the Connecticut Republican Party ("the State Party") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the proposed transfer of funds from the State Party's state account to its Federal account. In addition to your letter, the Commission received a comment letter from the Executive Director and General Counsel of the State Elections Enforcement Commission of Connecticut ("the State Commission") with further information pertaining to your request.

Congressman John Rowland became the gubernatorial nominee of the Connecticut Republican Party for the 1990 general election. Prior to his nomination for governor, his principal campaign committee for election to the House of Representatives, Rowland Congress, transferred out its excess funds in anticipation of termination, donating $5,000 to schools and charities and $103,765.12 to the Connecticut Republican Party. These transfers were made on July 23, 1990. The funds donated to the State Party were deposited into its "state bank account," usable for state and local elections, instead of the "federal bank account," which was usable only for Federal elections. You state that "[b]ecause on occasion the balance in that 'state bank account' fell below $103,765.12, the Rowland contribution inevitably was drawn upon to some extent."

The State Commission provided a copy of the conciliation agreement in settlement of the State law issues raised by this transfer and entered into by the State Elections Commission, the State Party, Rowland Congress, and Rowland Governor. According to the agreement, the State Commission concluded that the deposit of the funds into the account was contrary to Connecticut

State law, specifically Section 9-333s(b), General Statutes. That cited subsection provides in pertinent part that "[a] party committee may...not receive contributions from a committee of a candidate for federal...office, except in the distribution of a surplus as provided in subsection (c) of Section 9-333j." The State Commission concluded that the section should be construed as providing that "the surplus of a federal candidate may not be deposited in the state account of a party committee to be used for state and municipal elections."

The agreement also states that the State Party's deposit of the Rowland Congress surplus into the state account was "in honest clerical error." According to the agreement, the Party, in order to "effect compliance with [the State Commission's] construction of Section 9-333s(b)," has transferred $71,565.12 from its state account to an escrow account and will not use this money for state and municipal elections. The agreement also notes that the State Party had made a lawful contribution of $32,200 to Rowland Governor, and that Rowland Governor has remitted that sum to the State Party which, in turn, has deposited that sum in the escrow account. In addition, the agreement provides that the State Party will transfer the escrowed funds to the Federal account upon approval by the Federal Election Commission and that, if such a transfer is not approved, the Party will make another lawful disposition of the funds.[1/]

You ask whether there is any Federal statute which would affect or prohibit the transfer to the Federal account of the sums received from Rowland Congress.

The interim solution provided for in the conciliation agreement is a recognition that, under normal circumstances, the Federal account may not accept a transfer from the State Party's other accounts. Specifically, Commission regulations provide that an organization which finances political activity in connection with both Federal and non-Federal elections and which qualifies as a political committee has two options. It may establish a political committee which receives only contributions subject to the limitations and prohibitions of the Act regardless of whether such contributions are for use in Federal or non-Federal elections. 11 CFR 102.5(a)(1)(ii). In the alternative, it may establish separate accounts for Federal and non-Federal activity, as the Connecticut Republican Party has done. Only funds subject to the prohibitions and limitations of the Act may be deposited in the Federal account, and all disbursements in connection with any Federal election must be made from that account. No funds may be transferred to such an account from the other, non-Federal accounts of the organization. 11 CFR 102.5(a)(1)(i).[2/] The Commission concludes, however, that under the particular circumstances presented in this request, section 102.5(a)(1)(i) should not prevent a transfer of the escrowed funds into the Federal account.

According to the conciliation agreement, the funds originated from a transfer by the Rowland Congress Committee to the State Party of funds that Mr. Rowland determined were in excess of any amount necessary to defray his Congressional campaign expenditures. The Act and Commission regulations provide that excess campaign funds of a candidate may be transferred without limitation to any national, State, or local committee of any political party. 2 U.S.C. 439a; 11 CFR 113.1(e) and 113.2(c). Thus, the transfer itself was lawful. In addition, the funds could have been deposited into the Federal account at the time of the transfer, and the State Commission has concluded that the State Party's deposit of the funds into the state account was "in honest clerical error." Moreover, in most significant respects, the contribution limitations and

prohibitions of Connecticut law, regulating funds that may be contributed to the state account, are consistent with those of the Act.

Finally, the transfer of funds into an escrow account and the proposal for a transfer out of that account was prescribed by a State election agency in an attempt to remedy the described situation involving interpretation of applicable State law, and after consideration of the circumstances in a matter before that agency. The remedy is not merely a proposal offered by the State Party in an attempt to seek exemption from the requirements of the Act and Commission regulations.

Based on the unique combination of factors set out, the Commission concludes that the funds may be transferred from the escrow account to the Federal account.

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)

John Warren McGarry
Chairman for the Federal Election Commission

1/ The agreement notes that, on July 5, 1990, the party contributed $50,000 to Rowland Governor and that the Party's state account contained sufficient funds for the transfer to be made. The agreement stated that there was no evidence, however, to support a finding that the contribution was made with the understanding that Rowland Congress would provide its excess funds to the Party.

2/ Recently revised regulations of the Commission, effective January 1, 1991, provide exceptions to this prohibition in some specific circumstances not relevant here, e.g., the allocation of certain expenses for mixed Federal and non-Federal election activities. See 11 CFR 106.5(g) and 106.6(e).