



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 11, 1991

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1990-30

Elisabeth Smith, Treasurer
Helms for Senate
P.O. Box 26544
Raleigh, NC 27611

Dear Ms. Smith:

This responds to your letter dated December 17, 1990, requesting an advisory opinion on behalf of Helms for Senate concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the designation of contributions to retire general election debts.

You state that Helms for Senate ("the Committee") ended the 1990 general election campaign with a debt of approximately \$1 million. You state that the Committee relies heavily on small contributions from direct mail fundraising, its primary method of raising funds. The Committee will be soliciting over 120,000 previous supporters by mail to seek contributions to pay its debt. It estimates that it will need a minimum of 30,000 to 40,000 donations to eliminate its debt, including the cost of fundraising.

In mailings since the 1990 general election, the Committee has asked solicitees to designate on their checks that donations are for Senator Helms' campaign debt and approximately 50 percent of the donors have done so. When a contributor does not designate his post-election contribution for the 1990 debt, he or she usually sends a check made out to the Committee without writing "debt" on the check. The Committee has written each contributor who did not specifically designate in writing that his or her post-election contribution was for the debt, sending the contributor a redesignation form to sign and return. You state, however, that if a substantial number of supporters responding to future appeals simply make checks payable to the Committee and do not clearly designate "debt" on their checks, the Committee is faced with a "heavy and expensive administrative burden of recontacting tens of thousands of donors to seek redesignation."

You request that the Commission allow the Committee to satisfy the designation requirements by taking four steps. You propose that the Committee be permitted to send solicitation mailings that: (1) state that the use of the donations will be to pay the 1990 general election debt; (2) repeat the same on the contribution slips; and (3) include an additional line on the disclaimer stating funds will be used for 1990 debt elimination. As a condition in your proposal, you also state that the Committee will not solicit funds for any purpose other than to pay 1990 debts, including the cost of fundraising.

Assuming the first three conditions are met, you ask the Commission to conclude that the donor intends to contribute to retire the 1990 campaign debt, even if he or she does not so note on the check or by signing a contribution slip or redesignation form. Further, the Committee is willing to state to the Commission that it intends to repay its 1990 debt, to wind down, and to terminate. No funds from the 1990 Committee would be carried forward to Senator Helms' 1996 reelection committee, should he decide to run.

You have enclosed three previous solicitations from the Committee making references to the need to retire the 1990 campaign debt. All three are accompanied by contribution slips asking that checks be made payable to "Helms for Senate - Debt Retirement" with two of the three solicitations containing language added to the disclaimer stating that all contributions would be applied to Senator Helms' 1990 general election campaign.

Commission regulations set out rules to determine the election for which a contribution is made. If a contribution is not designated in writing by the donor for a particular election, the contribution is considered to be made with respect to the next election. 11 CFR 110.1(b)(2)(ii). If the contribution is donor-designated in writing, it is made for the election so designated. 11 CFR 110.1(b)(2)(i). If a contribution designated in writing for an election is made after that election, it may be made only to the extent that it does not exceed the net debts outstanding from such election; otherwise, it must be returned in accordance with Commission regulations, or a valid redesignation, or reattribution with redesignation, must be obtained. 11 CFR 110.1(b)(3)(i).

Commission regulations provide that a contribution is considered to be designated in writing for a particular election if: (i) the contribution is made by a negotiable instrument which clearly indicates the particular election with respect to which the contribution is made; or (ii) the contribution is accompanied by a writing signed by the contributor which clearly indicates the particular election. 11 CFR 110.1(b)(4)(i) and (ii). Redesignations also require a written statement signed by the contributor which designates a particular election; the committee must also inform the contributor that he or she (or it) may request a refund as an alternative to redesignation. 11 CFR 110.1(b)(4)(iii) and 110.1(b)(5)(ii)(A).

In explaining its regulation pertaining to written designation of a contribution, the Commission stated that

[u]nder new 110.1(b)(4), the contributor would be able to effectuate a designation by returning a preprinted form supplied by the soliciting committee that clearly states the election to which the contribution will be applied, provided that the

contributor signs the form and sends it to the committee together with the contribution.

Federal Election Commission Regulations, Explanation and Justification, 52 Fed. Reg. 763 (January 9, 1987). In discussing subsequent redesignations of contributions, the Commission stated that "[w]ritten redesignations signed by the contributor are required to ensure that they effectuate donor intent and to aid accurate recordkeeping and reporting." *Id.* Thus, the Commission anticipated that committees would send solicitation materials that clearly indicated the committee's proposed or intended use of contributions. Nevertheless, the Commission determined that a writing by a contributor indicating his or her intent or a signature on a form clearly stating such intent was necessary. See Advisory Opinion 1989-26.

Based on the foregoing, the Commission concludes that the Committee will not meet the designation requirements if it takes the steps proposed. The proposed steps would satisfy some of the elements of a clear designation. In order to confirm donor intent, however, the regulations require that the contributor's signature appear on the same document that contains the words of designation, i.e, the check or the contributor slip.

From the information presented in your request, including copies of past Committee solicitations, it appears that the Committee is treating its approximately \$1 million in debt as 1990 general election debt, as permitted in 11 CFR 110.1(b)(3)(iv), and is attempting to solicit funds for the retirement of this debt.^{1/} Any designations on the contributor checks, or in writings accompanying the checks, should clearly state that the contributions are for the 1990 general election. Thus, the contribution slips that the Committee sends for signature by the contributor should state, as you apparently propose, that the contributions are for the 1990 general election. The Commission also notes that a contribution designated for the 1990 general election debt must be aggregated with all other 1990 general election contributions made to the Helms campaign by that contributor, and the aggregate amount must be within the limits of 2 U.S.C. 441a(a). Any contributions received by the Committee that are not donor designated for the 1990 general election debt shall be treated as contributions for Senator Helms in the 1996 primary election. 11 CFR 110.1(b)(2)(ii).

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.

Sincerely,

(signed)

John Warren McGarry
Chairman for the Federal Election Commission

Enclosure (AO 1989-26)

1/ The Committee's 1990 post-general election report covering a period from October 18 to November 26, 1990, discloses \$1,088,546 in debts and obligations owed by the committee and \$60,883 cash on hand.