

36-C 631
CEIVEF

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1110 VERMONT AVENUE N W • WASHINGTON D C 20005 • (202) 887-9030

91 APR -5 11:02 27

April 3, 1991

91 APR -4 11:3:16

Federal Election Commission
999 E Street, NW
Washington, DC 20463

AOR
1991-12

Dear Commissioners:

The Schroeder Fund for the Future, Inc. (the "Fund") requests an Advisory Opinion from the Federal Election Commission (the "Commission") concerning application of the Federal Election Campaign Act of 1971, as amended (the "Act" or "FPCA"), and Commission regulations to a proposed transfer of monies from the Fund to Schroeder for Congress Committee, Inc. (the "Committee"), Representative Schroeder's principal campaign committee. The Fund proposes to transfer all amounts permissible under the Act to the Committee, to dispose of any residual funds by refunding such amounts to the original contributors, and to terminate as a political committee and a corporation

Background

The Fund was established in 1987 for the purpose of testing-the-waters to determine whether Representative Schroeder would run for president in 1988.^{1/} After Ms. Schroeder decided not to become a candidate for the Democratic nomination, the Fund was left with a substantial reserve of contributions. In a letter to contributors dated November 1987, Ms. Schroeder offered to refund a percentage of each of their contributions or, alternatively, to use the excess funds for the purpose of speaking out and building a constituency for issues that "we focused on in the campaign". Only a small number of contributors requested refunds. The overwhelming majority of responses reflected a contributor intent to have the Fund operate in support of positions on issues emphasized by

^{1/} The corporate name of the Fund was originally Schroeder 1988?, Inc. The Fund adopted its current assumed name pursuant to the Colorado Nonprofit Corporation Act in April 1988. The Fund is incorporated under state law solely for liability purposes, as provided under 11 C.F.R. § 114.12.

Ms. Schroeder in the course of her exploratory effort. In this sense, the character of the Fund did not change; it remained an organization associated with a public official and certain views on public policy, but no longer with a candidate for any federal office. Throughout 1988, winding down expenses from the exploratory effort were paid, and the Fund turned more to its new status, unrelated to any federal campaign. Few funds were received (other than receipts in the form of bank interest) and the Fund expended only a fraction of its remaining monies. The balance in its account remains approximately \$459,000.

In 1990, the Fund confronted for the first time what the General Counsel has referred to as the "unique" legal status of a former exploratory committee, carrying a large surplus, which is no longer operating to explore the election of any federal candidate. Because there was some question about its direction, the Fund filed with the Commission an Advisory Opinion Request, 1990-7, seeking to determine whether it could transfer its surplus funds to the principal campaign committee established by Congresswoman Schroeder to support her 1990 re-election campaign for the House.

The Committee asserted then, as it asserts now, that at the time of the Advisory Opinion Request the Fund and the 1990 principal campaign committee of Ms. Schroeder were not affiliated. The General Counsel recommended, and the Commission concurred in its Advisory Opinion, that the question of affiliation would simply be resolved by accepting, for purposes of the opinion, the position of the Fund on this issue.

At the same time it is apparent that there was some confusion on both parts -- the Fund's and the Commission's -- over this affiliation issue. In a letter to the Commission dated December 20, 1989, counsel to the Fund noted that the Fund was "uncertain about your concerns" regarding affiliation. He was responding specifically to an earlier communication from the Commission's Reports Analysis Division ("RAD") which noted the existence of the Fund and presented the assumption that it was receiving contributions or making expenditures related to Ms. Schroeder's 1990 re-election campaign. RAD requested, based on this assumption, that the Fund be treated as affiliated with Ms. Schroeder's 1990 principal campaign committee, or, in the alternative, that Ms. Schroeder disavow the activities of the Fund.

Though "uncertain" about the Commission's concerns, counsel assumed that this inquiry "may be centered on her congressional candidacy" and informed the Commission that the Fund was wholly unrelated to the 1990 re-election campaign. It is in this sense that the Fund quite properly disavowed any

affiliation with the Committee. "Affiliation" was treated in this context as meaning that the two committees were operating simultaneously for the same purpose in support of the re-election of Ms. Schroeder in 1990. This was never the case.

In fact, during this period and since, the exploratory committee has been a non-federal political organization directing its efforts toward establishing a stable purpose and structure. Since Ms. Schroeder decided against a candidacy for the presidency of 1988, the Fund has roughly stayed in place, financing fees and travel by consultants in connection with planning and administrative matters, maintaining a mailing list in order to keep supporters informed and taking only nominal steps toward developing a program on the issues associated with Schroeder. At no time did the Fund concern itself with, much less spend funds toward, any federal election-related activities of Ms. Schroeder in the course of her 1990 House re-election campaigns.

At the present time, the Fund's Board, in consultation with Ms. Schroeder, has concluded that it should alter its originally planned course of action centered on issues. It has concluded that it is appropriate for the organization, and most consistent with its goals when originally established, to transfer the balance of its funds to the Schroeder 1992 House Re-election Committee. The Fund would then terminate. The Fund Directors are confident that this course of action is one that the contributors would approve, many of whom made clear their wish to have the Fund's surplus of 1987 dedicated to a use consistent with the positions and activities of Ms. Schroeder.

Representative Schroeder intends to run for reelection to the U.S. House of Representatives from the First District of Colorado in 1992. Her principal campaign committee has been, and will be, the Schroeder for Congress Committee. She does not plan to become a candidate for President in 1992, or to conduct exploratory activities through the Fund or any other entity.

Discussion

Both the Act and pursuant regulations support the finding that the Fund and the Committee are now affiliated and, therefore, that the Fund may transfer, without limit, amounts to the Committee.

Affiliation generally results when two committees are "established, financed, maintained or controlled" by the same

individual or group of persons. 2 U.S.C. § 441a(a)(5); 11 C.F.R. § 100.5(g). Affiliation controls the application of contribution limitations; it is relevant for FECA purposes only when a "committee" seeks to influence a federal election with contributions and expenditures. Until now, the Fund was not such a committee. Although established by Patricia Schroeder along with others, it functioned first as an exploratory committee, which is under FEC regulations not a political committee if the individual chooses not to run, then lay essentially dormant as it considered a program of activities and policy development unrelated to federal elections.

The Fund is now prepared to redefine its purpose for future activities to be one of support of a federal candidate -- Congresswoman Schroeder. Only now does the "control" of Ms. Schroeder become relevant to "affiliation" as it affects the making of any contributions or expenditures. The Commission has considered the relationship between a federal candidate's principal campaign committee and an organization, that neither proposes, nor has the purpose, to influence a federal election, in which the federal candidate has a principal or controlling role; in no case has the Commission found the two organizations to be "affiliated." See Advisory Opinion 1978-15, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5304 (March 30, 1978); Advisory Opinion 1977-54, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5301 (March 24, 1978) (a statewide petition drive, chaired by federal candidate, is not considered part of his campaign even where his name appears on mailings, media and public communications); Matter Under Review 1235, July 2, 1980 (nonfederal committee organized by an individual who later became a federal candidate, for purpose of promoting tax reduction, was not affiliated with, nor did it make contributions to, the federal candidate's principal campaign committee). Only at the time an organization conducts activities to influence a federal election does the issue of "affiliation" arise.

This is the crucial difference which may have been obscured in the earlier dialogue with the Commission leading to the issuance of Advisory Opinion 1990-7. The Fund and the Committee have been different organizations, one "non-federal" and unregistered and the other federal and registered; and they operated for different purposes. Now that the Fund wishes to devote its resources to the support of Ms. Schroeder's active candidacy, its purposes and those of her re-election committee merge and present the question of affiliation for purposes of any proposed fund transfer.

The Commission regulations recognize that two committees may be deemed "affiliated" even though one of them has not been

a political committee under the Act 11 C.F.R. § 102.6(a)(1); see also Advisory Opinion 1990-16, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5996 (October 5, 1990) (a nonfederal committee and federal political committee controlled by the same individual were deemed affiliated and permitted to transfer unlimited "permissible" funds); Advisory Opinion 1987-16, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5896 (July 13, 1987); Advisory Opinion 1987-12, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5892 (June 12, 1987) (state committee formed to support nonfederal candidate may transfer unlimited funds, permissible under the Act, to principal campaign committee of same candidate); Advisory Opinion 1984-46, 1 FEC Fed. Election Camp. Fin. Guide (CCH) ¶ 5788 (October 12, 1984); Advisory Opinion 1982-52, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5692 (September 30, 1982) But here again, affiliation is only an issue when the nonfederal committee plans to devote resources to a federal election purpose, and the very question of contribution limitations to which "affiliation" is relevant is presented.

The circumstances presented here are substantially similar to those addressed in these Advisory Opinions. The Fund was not a political committee under the Act, established and controlled by Ms. Schroeder for an exploratory purpose. As an exploratory committee, amounts received and expended to test-the-waters did not qualify as contributions or expenditures under the Act 11 C.F.R. §§ 100 7(b)(1) and 100 8(b)(1). Since the exploratory efforts concluded, the Fund has not received any contributions or made expenditures to influence the election of a federal candidate. Only now does the Fund elect to proceed with "contributions" and "expenditures" as defined by the Act. The common control and direction of Ms. Schroeder requires, therefore, that as a "committee," the Fund be treated as "affiliated" with the Schroeder principal campaign committee.

Unlike a nonfederal committee, which may have impermissible funds, an exploratory committee is required to comply with all of the dollar limitations and source restrictions applicable to a political committee. There has been no opportunity for corporate, labor or any other impermissible funds to enter the Fund's accounts nor have contributions been accepted by the Fund in excess of the limitations. Not only has the Fund strictly adhered to these limits, it has voluntarily complied with the reporting requirements under the Act.

The Fund proposes to follow all of the necessary steps to make such a transfer as summarized in the above-referenced Advisory Opinions. Because the amount of funds transferred would be in excess of \$1,000, the Fund would be required to

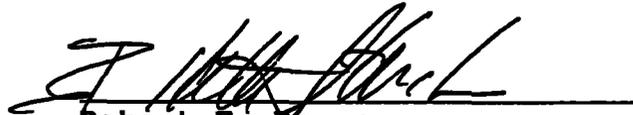
register and report as a "political committee " Since the Fund has voluntarily reported from its inception, it proposes to modify its registration and bring its reports up to date to the extent necessary to reflect its affiliated political committee status. The total amount transferred would be all cash on hand starting with the contributions most recently received. No funds that are impermissible under the Act when aggregated with contributions to the Committee will be transferred. The Fund proposes to aggregate all contributions received by the Fund after September 28, 1987 and before November 6, 1990 with contributions received by the Committee for the 1990 House election. As a result of this aggregation such funds in excess of the contribution limits will be refunded to the original contributor.

Conclusion

The Fund requests an opinion by the Commission on the issue presented in this Request:

May the Fund transfer its funds permissible under the Act to the Committee?

Respectfully submitted,



Robert F. Bauer

B. Holly Schadler
Counsel

Schroeder Fund for the Future, Inc