



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

AGENDA ITEM
For Meeting of: May 23, 1991
SUBMITTED LATE

MEMORANDUM

TO: THE COMMISSION
FROM: SCOTT E. THOMAS
COMMISSIONER
SUBJECT: PROPOSED AMENDMENTS TO DRAFT AO 1991-12
DATE: MAY 22, 1991

I have several proposed revisions to the draft advisory opinion. First, I would clarify that in determining what the Fund's cash on hand is, we would look to the funds most recently received, not the "contributions" most recently received. The OGC draft on page 6, lines 15, 17, and 21, on page 7, line 17, and on page 8 line 29, uses the limiting term "contributions." This is a term of art that should not be applied unless we are referring to donations that qualify as "contributions." Moreover, use of "contributions" suggests that even if the last receipts actually consisted in part of, say, loan repayments, interest payments, or rebates (none of which are "contributions"), we would nonetheless require the committee to pretend those funds were not the last received and to instead pretend that some other earlier "contribution" receipts were part of the funds last received. This would be unworkable and would not reflect reality. Although §104.12 uses the word "contributions," our more recent regulations at §110.3(c)(4), (c)(5)(ii), and (c)(6)(i) reflect the more logical approach.

Therefore, I would substitute the word "funds" for "contributions" in the five places indicated above. We would still require funds that would be impermissible if received by the federal committee to be excluded from the reportable cash on hand and transferable balance in the appropriate cases. There is no apparent problem in this regard here.

Second, I would use the word "donation" rather than "contribution" when referring to the funds given to the Fund. This would avoid the confusion generated by the word "contribution" which has a precise application. This change would be made on page 6, line 23, on page 7, lines 6 and 18, and on page 8, lines 4, 5, and 10.

60 day rule didn't in administrative action - used to be "reasonable time"

Had a motion application. Let's not broaden Nixon's exception to the rule

Third, I would change the conclusion on page 8, lines 22 through 26, that donations to the Fund before Ms. Schroeder withdrew as a potential candidate in 1987 also must be subject to the aggregation process. Even though such donations were not "contributions," they should be treated like donations to a non-federal candidate's authorized committee. Our regulations at section 110.3(c)(6)(ii) do not require aggregation of the latter donations if made before the candidate withdrew from the race. Our 'testing the water' regulations should not be stretched to unreasonable lengths. Though donations for such purposes are not technically "contributions," we do apply the limits and prohibitions to them. I think the same aggregation rules we use for other donations to an authorized committee should be applied.

In addition to transfer for one election we are in effect broadening it to the next election.

Accordingly, I would delete the language beginning with "By choosing the . . ." on page 8, line 11, and ending at line 26 of that page. I would substitute the following: "The Commission concludes that all donations made after September 28, 1987, must be aggregated with contributions by the same persons to the 1992 election. See, by analogy, 11 CFR 110.3(c)(6)(ii)."

87-12 did not even provide for redescig. - redescig. reg. already effective

I have attached the marked-up version showing the foregoing changes.

1) Contributors issue

- a) Language of 11 CFR 104.12, the applicable regulation here.
- b) the use of funds is not dispositive - 104.12 uses "funds" and then proceeds to define them.
- c) ~~see~~ ADs, including most recent, is 90-16 here and this standard
- d) Fruit of the poisonous tree - may not be as much of a problem here - although it could be, i.e., intent on insider control that can't be included for aggr. purposes

2) 60 day rule - see above

3) Aggregation - see 84-3
TTW specifically excluded - letter from (c)(4).

It wasn't specifically excluded from (c)(6) but why would it be considered?