



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 14, 1991

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-12

Robert F. Bauer  
B. Holly Schadler  
Perkins Coie  
607 Fourteenth Street, N.W.  
Suite 800  
Washington, D.C. 20005-2011

Dear Mr. Bauer and Ms. Schadler:

This responds to your letter dated April 3, 1991, requesting an advisory opinion on behalf of the Schroeder Fund for the Future, Inc. ("the Fund") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed transfer of moneys from the Fund to Schroeder for Congress Committee, Inc. ("Schroeder for Congress"), the principal campaign committee of Representative Patricia Schroeder.

The Fund was established in 1987 for the purpose of testing the waters to determine whether Ms. Schroeder would run for president in 1988. The corporate name of the Fund was originally Schroeder 1988?, Inc. and the Fund adopted its current assumed name pursuant to the Colorado Nonprofit Corporation Act in April 1988. You state that the Fund is incorporated under state law solely for liability purposes, as provided under 11 CFR 114.12(a). In addition, the Commission noted in Advisory Opinion 1990-7 that the Fund filed a 1989 Federal income tax return as a "political organization," as defined in 26 U.S.C. 527(e)(1).

After Ms. Schroeder decided not to become a presidential candidate, the Fund "was left with a substantial reserve of contributions." Ms. Schroeder sent a letter, dated "November 1987," to her contributors in which she offered to refund a percentage of each of their contributions or, in the alternative, 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 relatively small number of contributors asked for refunds. You state that "[t]he overwhelming majority of responses reflected a contributor intent to have the Fund operate in support of positions on issues emphasized by Ms.

Schroeder in the course of her exploratory effort."<sup>1</sup> You assert that, "[i]n this sense, the character of the Fund did not change" and "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."

You state that, throughout 1988, the Fund paid expenses for winding down from the exploratory effort, and the Fund "turned more to its new status, unrelated to any federal campaign." You maintain that few funds were received, other than receipts in the form of bank interest, and that the Fund expended only a fraction of its remaining moneys.<sup>2</sup> According to the most recent report filed by the Fund, the 1990 July Quarterly, the Fund's balance is approximately \$467,000.

In April 1990, the Fund requested an advisory opinion from the Commission asking for approval to transfer its surplus funds, which totaled \$459,000 at the time, to Schroeder for Congress for the 1990 re-election campaign. The Fund proposed that it could be treated as a previous Federal campaign committee of Ms. Schroeder and thereby make such a transfer. The Fund asserted that it was not affiliated with Schroeder for Congress. In Advisory Opinion 1990-7, the Commission barred a transfer beyond the \$1,000 limit of 2 U.S.C. 441a(a)(1)(A), and concluded that the Fund, as a testing the waters committee, did not qualify as a previous campaign committee. The Commission also accepted the Fund's assertion of non-affiliation with Schroeder for Congress, but did so only for purposes of the opinion. The Commission emphasized that making this assumption did not imply the Commission's agreement with the assertion, nor with related assertions that the Fund is not a political committee and has not accepted any contribution or made any expenditure under the Act.

You now maintain that the Fund's assertion of non-affiliation was based upon the premise that it did not concern itself with, nor spend funds toward, any Federal election-related activities of Ms. Schroeder in the course of her 1990 House re-election campaign. You state that the Fund's Board, in consultation with Ms. Schroeder, has now concluded that it should "alter its originally planned course of action centered on issues" and that, consistent with its goals when originally established, it should transfer its balance to Schroeder for Congress for 1992. You ask whether this may be done.

You state that since the Fund has voluntarily filed reports with the Commission 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 Fund also proposes that all contributions received by the Fund after September 28, 1987 (when Ms. Schroeder announced the termination of her presidential testing the waters effort), and before November 6, 1990, be aggregated with contributions received by Schroeder for Congress for 1992, and that excessive funds would be refunded to the original contributors. The Fund would thereafter terminate as a political committee and as a corporation.

In Advisory Opinion 1990-7, the Commission concluded that, by merely testing the waters for the presidency, Mrs. Schroeder did not become a candidate for the 1988 presidential election and the Fund could not be considered a previous Federal campaign committee. See 11 CFR 110.3(c)(4). The Commission based this conclusion on the testing the waters provisions of the regulations which provide that funds received, and payments made, solely for determining whether an individual should become a candidate are not contributions and expenditures under

the Act unless and until such time as the individual becomes a candidate. 11 CFR 100.7(b)(1) and 100.8(b)(1). The Commission concluded, therefore, that the Fund could not rely on 11 CFR 110.3(c)(4) to make unlimited transfers to Schroeder for Congress.

Commission regulations provide, however, that transfers of funds may be made without limit on amount between affiliated committees whether or not they are political committees under the Act. 11 CFR 102.6(a)(1), 110.3(c)(1). Included within the definition of affiliated committees are committees that are established, financed, maintained or controlled by the same person or group of persons. 2 U.S.C. 441(a)(5); 11 CFR 100.5(g)(2), 100.5(g)(3)(v), 110.3(a)(1)(ii), and 110.3(a)(2)(v). Both the Fund and Schroeder for Congress are controlled by Ms. Schroeder for campaign-related purposes. See Advisory Opinions 1990-16, 1987-12, and 1984-3.<sup>3</sup> The Commission concludes, therefore, that the Fund is affiliated with Schroeder for Congress and may make transfers to Schroeder for Congress that are not subject to the limits of 2 U.S.C. 441a.

Such a transfer, if in excess of \$1,000 as you anticipate, will cause the Fund to become a political committee subject to the registration and reporting requirements of the Act. 2 U.S.C. 431(4)(A); 11 CFR 100.5(a). The Fund has filed a statement of organization and amended statements indicating that it was initially an exploratory committee and later that it was not an exploratory committee, but also did not fit into any of the political committee categories listed on the registration form. The Fund will now have to file a statement of organization indicating that it is an authorized committee of Ms. Schroeder for her 1992 re-election campaign.

The Fund as a new political committee will have to disclose on its first report as a political committee the sources of funds then in its account, which are assumed to be composed of those contributions most recently received prior to the transfer, and it will have to itemize such contributions to the extent required by the Act. 11 CFR 104.12; 2 U.S.C. 434(b); 11 CFR 104.3(a). The Fund will also be required to exclude from its beginning cash on hand, and from those funds proposed to be transferred to the already existing political committee, any contributions not permissible under the Act. 11 CFR 104.12. See 2 U.S.C. 441b, 441c, and 441e. This means that donations from corporations, labor organizations, national banks, Federal contractors, and foreign nationals must be excluded from funds to be transferred. Advisory Opinions 1990-16 and 1987-12. You have indicated that the Fund has complied with the prohibitions of the Act; hence, it appears that no such exclusions need be made.

Moreover, since the contribution limits apply to Schroeder for Congress and since the Fund is affiliated with it, the contribution limits of 2 U.S.C. 441a(a) apply to the contributors to the Fund. Accordingly, the donations of any person that are included in the Fund's cash on hand must be aggregated with any contribution made by that person to Schroeder for Congress for the next election, i.e., the 1992 primary election. The aggregate amount in excess of the limits must also be excluded from the beginning cash on hand and the amount transferred. 11 CFR 104.12. Advisory Opinion 1990-16. The applicable limits are \$1,000 in the aggregate for contributions from individuals and \$5,000 in the aggregate for contributions from multicandidate committees. 2 U.S.C. 441a(a)(1)(a) and (a)(2)(A). Therefore, if the Fund's cash on hand, i.e., the contributions most recently received, includes an \$800 donation to the Fund and the same donor has also contributed \$500 to Schroeder for Congress for the 1992 primary election, then \$300 must be

excluded from the beginning cash on hand of the Fund as a political committee and from the amount transferred to Schroeder for Congress.

This rule applies unless the excessive amount can be redesignated. If Schroeder for Congress intends to seek the donor's written redesignation to the 1992 general election of all or part of the \$500 contribution in order to remedy an excessive aggregate contribution, such redesignation must be obtained within sixty days of the receipt of the \$500 contribution. 11 CFR 103.3(b)(3). Similarly, a donor redesignation may be done for the earlier \$800 donation to the Fund but only if the redesignation is obtained within sixty days after the Fund files a Statement of Organization as an authorized committee of Ms. Schroeder for 1992. Contributions that qualify for retention in the cash on hand of a newly registered political committee are not materially distinguishable from other contributions that donors may redesignate if done in compliance with Commission regulations. See 11 CFR 104.12 and 110.1(b).

You propose that aggregation should be made for donations received after September 28, 1987, and before the general election day in 1990. By choosing the date of September 28, 1987, it appears that you view contributions comprising the cash on hand and received by that date as not aggregable because they were originally made in connection with the 1988 election. As stated above, the Commission concluded in Advisory Opinion 1990-7 that the Fund could not be considered a previous Federal campaign committee for the 1988 presidential election because funds received, and payments made, solely for determining whether an individual should become a candidate are not contributions and expenditures if the individual does not become a candidate. 11 CFR 100.7(b)(1) and 100.8(b)(1). Since the funds raised prior to September 28, 1987, were not contributions with respect to the 1988 elections, they are not excludable from the pool of funds to be aggregated. See Advisory Opinion 1990-16, note 3.

Based on the foregoing, the Fund's report filed for the period when the transfer is made should itemize the contributions that are the sources of its beginning cash on hand as a political committee. 11 CFR 104.12. The beginning cash on hand will be the Fund's present cash on hand minus the amounts for each contributor (in the Fund's present cash on hand) that, when aggregated with such person's contribution(s) to Schroeder for Congress for the 1992 primary election, exceed the applicable section 441a(a) limit.

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

Enclosures (AOs 1990-16, 1990-7, 1987-12, and 1984-3)

## FOOTNOTES

1/ The Fund's 1987 year end report disclosed cash on hand of \$404,020. The Committee reports also disclose that the subsequent refund effort resulted in the return of approximately \$22,000 on or about April 15, 1988.

2/ Reports filed by the Fund indicate that it has received contributions totaling approximately \$100,000 in 1988 and 1989 as compared with \$878,000 in 1987. The reports also disclose that the Fund made expenditures of \$100,000 in 1988 and 1989, as compared to \$477,000 in 1987.

3/ Although not dispositive evidence of affiliation, the treasurer of the Fund, Maxwell Snead, and the treasurer of Schroeder for Congress, Victoria Promis are law partners, and both committees appear to share an address which is also the address of Snead & Promis.