



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 6, 1991

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-14

Larry J. Steinberg, Treasurer
The Republican Party of Kentucky
Capitol Avenue at Third Street
P.O. Box 1068
Frankfort, KY 40602

Dear Mr. Steinberg:

This responds to your letter dated April 12, 1991, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use of funds received by the Republican Party of Kentucky ("the RPK") as a result of a state income tax check-off.

You state that, since January 1, 1983, Kentucky law has permitted each individual Kentucky taxpayer to designate that a portion of his or her State income tax be paid by the State to either the Republican or Democratic party, or to any other political party meeting the State law definition of political party. Presently, an individual, including each spouse in a couple filing jointly, is permitted to designate two dollars.¹ The designation will not increase or decrease the liability of a taxpayer or reduce his or her refund of taxes previously paid.

Fifty cents of each designation is remitted by the State Treasurer to "the appropriate official of the local governing authority of the designated political party within the taxpayer's resident county," and the remainder is remitted by the State Treasurer to "the appropriate official of the state governing authority of the designated political party." Kentucky law requires that the state and local party governing authorities receiving the remittances use the funds only for support of the party's candidates in a general election and for the administrative costs of maintaining a political party headquarters. The law also requires that the governing authorities deposit the remitted funds in a bank account separate from the other accounts of the party, and that all expenditures from those funds are made by check. You state that the separate account holding

these tax check-off funds is in a bank which has already been designated by the RPK as a depository under the Act because the party's "Federal operating account" is also held there.

You ask whether RPK may consider the check-off funds it receives to be funds of its Federal committee. RPK proposes to combine the receipts of, and disbursements from, the separate check-off account with the future activity from its current Federal depository accounts. RPK would also consolidate the funds which were in the account as of January 1, 1991, as part of the Federal account.

The Commission has issued a number of advisory opinions that have concluded or assumed, as a general rule, that funds from state tax check-offs or fees paid for a state service, may be deposited in a state party's Federal account. Advisory Opinions 1983-15, 1982-17, 1980-103, and 1978-9. The Act and Commission regulations provide that a political committee may have more than one account for its Federal activity. 2 U.S.C. 432(h)(1); 11 CFR 103.2.

Because the amount designated will not increase the taxpayer's liability, or decrease the amount of any tax refund payable to the taxpayer, the amount designated by the individual taxpayer is not a contribution by that taxpayer. Advisory Opinion 1983-15, n. 1. Instead, the proceeds would be miscellaneous receipts. Advisory Opinion 1982-17.

Even though such receipts are not contributions by the taxpayers, they are the source for funds that go into a Federal account and will be used by that account for contributions to Federal candidates. As stated in Advisory Opinion 1988-33, the Act and regulations "assume that the Commission, in enforcing the prohibitions and limitations, will need to trace the sources of funds proposed to be infused into the Federal election process."

The tax check-off funds are derived only from sources permissible under the Act, i.e., individual taxpayers, in amounts not exceeding the limitations. In addition, since the account holding these funds will be a separate account holding no other funds, it will comply with the requirements of 11 CFR 102.5(a)(1) for accounts making Federal election contributions or expenditures.

As indicated in your request, the receipts from the check-offs should be reported as miscellaneous receipts on FEC Form 3X, line 17. There should be an explanation indicating their source and identifying the appropriate state agency as the payor. 2 U.S.C. 434(b)(2)(J) and (3)(G); 11 CFR 104.3(a)(2)(viii)(A) and (4)(vi). Advisory Opinion 1982-17.

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 1988-33, 1983-15, 1982-17, 1980-103, and 1978-9)

ENDNOTES

1/Designation may be made only by those whose income tax liability for the year is as great or greater than the amount to be designated. In a joint return, each spouse shall be considered to have an equal tax liability.