



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 19, 1991

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-21

Robert E. Weiss
920 Village Oaks Drive
P.O. Box 3269
Covina, CA 91722

Dear Mr. Weiss:

This responds to your letters dated May 23 and July 2, 1991, requesting an advisory opinion on behalf of the Alliance for Representative Government concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the distribution of the committee's remaining funds.

You are the treasurer of the Alliance for Representative Government ("ARG"), a multicandidate committee registered with the Commission since May 1982. You state that the "principal proponent" of ARG is Peter Schabarum, a former officeholder in the State of California, who formed the committee and was involved in fundraising for it. ARG was established for the purpose of supporting Congressional candidates with political philosophies similar to that of Mr. Schabarum. Mr. Schabarum was Supervisor of the First District, County of Los Angeles from March 3, 1972, to March 8, 1991, and before that was a California Assemblyman for approximately six years, but he is not an officeholder at this time. You add that Mr. Schabarum was never a Federal candidate or Federal officeholder.

ARG now wishes to terminate. You ask whether the committee may distribute approximately \$30,000 to \$35,000 in its remaining funds to Mr. Schabarum.¹

Although Mr. Schabarum was ARG's principal proponent, he was not a Federal candidate and the committee was not the principal campaign committee or an authorized committee of Mr. Schabarum for election to Federal office. Thus, the restrictions of 2 U.S.C. 439a and 11 CFR 113.2, e.g., the prohibition against personal use by a candidate, do not apply to the committee's excess funds. In considering the disbursements of political committees other than principal

campaign committees or authorized committees, the Commission has concluded that a committee may expend its funds for any lawful purpose consistent with the Act and Commission regulations. Advisory Opinions 1986-32, 1985-34, and 1983-4. Subject to certain conditions, nothing in the Act or Commission regulations would prohibit ARG from distributing the remaining funds to Mr. Schabarum.

If the funds are being distributed to Mr. Schabarum in anticipation of or related to a possible Federal candidacy, then the Committee's distribution to him is subject to the limits of 2 U.S.C. 441a(a)(2)(A) and would not be considered personal funds under 11 CFR 110.10(b). See Advisory Opinion 1988-7. In addition, if the distribution is being made in contemplation of having Mr. Schabarum forward those funds to specific political committees, then the distribution will result in contributions by ARG to those committees, with Mr. Shabarum acting as either ARG's agent or a conduit. See 11 CFR 110.6. The contributions will be subject to the applicable section 441a limits.²

In addition, the Commission notes that, unless the funds are being distributed for the purpose of influencing a Federal election, any provision of State or local law applicable to the distribution to Mr. Schabarum would not be preempted by the Act or Commission regulations. See 2 U.S.C. 453, 11 CFR 108.7; see also Advisory Opinions 1986-39 and 1986-5. The Commission expresses no opinion as to the possible tax ramifications of the proposed distribution because that issue is not within its jurisdiction.

Unless the distribution is made for the purpose of influencing a Federal election, it should be reported as a disbursement under 11 CFR 104.3(b)(1)(ix) and 104.3(b)(3)(ix). In addition, ARG may terminate its activities only upon filing a termination report pursuant to Commission regulations at 11 CFR 102.3(a).

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 1988-7, 1986-39, 1986-32, 1986-5, 1985-34, and 1983-4)

1/ ARG's 1990 year end report discloses cash on hand of \$47,727 and no debts or obligations owed to or by the committee. You state that there are no noncash assets owned by the committee to be distributed.

2/ Such an arrangement may result in further complications. For example, if Mr. Schabarum is supposed to contribute the funds to specific political committees, then, in fact, ARG may still be

in operation. If so, the placement of ARG's funds in Mr. Schabarum's accounts would be prohibited by 2 U.S.C. 432(b)(3) and 11 CFR 102.15.