



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 11, 1991

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-31

L.S. Robinso
Finance Coordinator
Porter Goss Re-Election Team
P.O. Box 517
Ft. Myers, FL 33902

Dear Ms. Robinson:

This responds to your letters dated September 12 and July 17, 1991, requesting an advisory opinion on behalf of the Porter Goss Re-Election Team ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the reporting of charitable donations made in response to a Committee solicitation for contributions.

The Porter Goss Re-Election Team is the principal campaign committee for the re-election of Representative Porter Goss to the U.S. House of Representatives in 1992. In June 1991, the Committee sent out a letter under Mr. Goss' signature soliciting contributions to his 1992 re-election effort. Michael Tracy responded to the solicitation with a letter to Mr. Goss indicating that, in lieu of contributions to the campaign, he was sending donations to charities. With the letter, Mr. Tracy enclosed photocopies of four \$50 checks made payable to children's charities in Sarasota County. These checks each included the notation: "Donation in name of Porter Goss - member of Congress." Mr. Tracy sent the checks themselves directly to the charities.

The four designated charities have written thank you letters to Mr. Goss, but, other than these unsolicited letters, the Committee has had no direct contact with the charities. You state that the Committee knows of no public announcement with regard to Mr. Tracy's donations and has no intention of making the fact of these donations public or referring to them in any future solicitation or mailing. You also state that the Committee has no reason to think that the charities will make the donations public.

You ask whether the Committee has any reporting requirements with respect to the four donations.

The Act broadly defines the term "contribution" to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A)(i); 11 CFR 100.7(a)(1). Authorized political committees are required to report the total of all receipts for the reporting period and the calendar year, including the total of all contributions received from persons other than political committees. 2 U.S.C. 434(b)(2) and (b)(2)(A); 11 CFR 104.3(a)(3) and (a)(3)(i). An authorized committee must report the identification of each individual whose contribution or contributions to the committee aggregate in excess of \$200 per calendar year. 2 U.S.C. 434(b)(3)(A); 11 CFR 104.3(a)(4)(i). Your reporting obligations depend upon whether the Committee has received something of value from Mr. Tracy.

The Commission notes that there was no actual receipt of the checks by the Committee or the candidate. The Committee did not receive the checks for its own use, nor pass them along to the charities in any attempt to join in the donor's conduct.

In addition, there does not appear to be any constructive receipt by the Committee or the candidate in the form of some control over the funds. The Commission has cautioned that the participation of a candidate or the use of a candidate's name in connection with charities or other organizations may or may not result in a contribution to the candidate's Federal campaign, depending on the facts and circumstances of a situation (including whether contributions to the candidate's campaign were solicited). See Advisory Opinions 1986-37, 1985-38, and 1978-15. Even though the checks written by Mr. Tracy contained a reference to Congressman Goss and were made in response to a campaign solicitation, the Committee had no role in Mr. Tracy's decision to donate to the charities or in the selection of the recipient charities, was merely informed by Mr. Tracy of the donations after they were made, and was thanked gratuitously by the donees. In addition, no action was taken by the Committee or the candidate to make the contributions public. The Committee is not considered a recipient of contributions as a result of a use of the candidate's name that was neither consented to, nor ratified by, the Committee.

The Commission concludes that the Committee has not received a contribution and therefore there are no reporting obligations with respect to Mr. Tracy's four charitable donations.

The Commission expresses no opinion as to possible application of House rules to the described activity, nor as to any tax ramifications, since those issues are outside its jurisdiction

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. 2 U.S.C. 437f.

Sincerely,

(signed)

John Warren McGarry
Chairman for the Federal Election Commission

Enclosures (AOs 1986-37, 1985-38, and 1978-15)