



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

May 15, 1992

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-14

The Honorable Dan Burton  
120 Cannon House Office Building  
Washington, D.C. 20515

Dear Mr. Burton:

This responds to your letter dated April 15, 1992 requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed transfer of your campaign funds to a charitable organization.

You state that you would like to arrange to have your excess campaign funds transferred to a nonprofit, tax-exempt foundation in the event of your unforeseen death. You wish to prepare written instructions now directing your campaign treasurer to make this transfer upon your death. You state that the foundation will be established to provide student scholarships or to make grants to colleges or other charitable institutions. You indicate that the instructions you intend to prepare would not involve any testamentary device, and that your personal estate would not receive any direct or indirect financial benefit from the foundation. You ask whether the Act and Commission regulations allow you to designate, in advance, that your excess campaign funds be put to this use after your death.

The Act and Commission regulations define "excess campaign funds" as amounts received by a candidate as contributions which are in excess of any amount necessary to defray campaign expenditures. 2 U.S.C. 439a and 11 CFR 113.1. Excess campaign funds may be used for a variety of specified purposes that are expressly made lawful: they may be used to defray any ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of Federal office; they may be contributed to any organization described in section 170(c) of Title 26, United States Code; and they may be used "for any other lawful purpose," including transfers

without limitation to any national, State, or local committee of any political party. 11 CFR 113.2 and Advisory Opinions 1987-11, 1986-39, 1985-9 and 1981-15.

Thus, the Act and regulations specifically authorize transfers of excess campaign funds to organizations described in 26 U.S.C. 170(c). The Commission concludes that, if the foundation described in your request is one described in section 170(c), transfers of excess campaign funds from your campaign committee to the foundation would be permissible under the Act. See, for example, Advisory Opinion 1985-9.

The distribution of the campaign funds to an entity that does not qualify under 26 U.S.C. 170(c) may nonetheless be a transfer "for any other lawful purpose" under the Act. Advisory Opinion 1986-39 (private trust for sole benefit of minor child not related to former candidate would not confer financial benefit to former candidate). Such a use may, however, have adverse Federal income tax consequences.<sup>1/</sup>

You ask whether the Act and regulations permit you to issue instructions to your treasurer now on how your funds are to be distributed after your death. Previous advisory opinions authorizing transfers of excess funds to charitable foundations, and a private trust, did not involve designations by the candidate of how funds were to be distributed at some time in the future. See Advisory Opinions 1987-11 and 1986-39. However, the Act and the regulations do not limit the time when these transfers may be made. Therefore, absent any applicable State law precluding such a designation, you may issue instructions to your treasurer now on the distribution of your excess campaign funds at a later date.<sup>2/</sup>

The Commission notes that your committee is required to report all disbursements of its excess campaign funds. 2 U.S.C. 434(b)(4), 434(b)(5), and 11 CFR 104.3(b). Payments to a charitable organization are reportable as other disbursements. See 2 U.S.C. 434(b)(4)(G) and 434(b)(6)(A), 11 CFR 104.3(b)(2)(vi) and 104.3(b)(4)(vi).

The Commission expresses no opinion about the Federal or other tax ramifications of this activity, nor on the application of any other State or Federal law outside the Commission's 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. See 2 U.S.C. 437f.

Sincerely,

(signed)

Joan D. Aikens  
Chairman for the Federal Election Commission

Enclosures (AOs 1987-11, 1986-39, 1985-9, 1983-27, and 1981-15)

ENDNOTES:

1/ For example, 26 U.S.C. 527(d) provides, in part, that campaign funds donated to an entity described in 26 U.S.C. 509(a)(1) or (a)(2), which is exempt from tax under 26 U.S.C. 501(a), are not treated as diverted for the personal use of the candidate or any other person. The implication is that donations to other entities, not similarly exempted by section 527(d), may result in taxable income.

2/ Your request states that your personal estate will not receive any direct or indirect financial benefit from the foundation. Consequently, the Commission does not address any question involving the conversion of excess campaign funds to personal use. 2U.S.C. 439a, Advisory Opinions 1986-39 and 1983-27.