



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 25, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-21

The Honorable Daniel Patrick Moynihan
United States Senate
Washington, DC 20510-3201

Dear Senator Moynihan:

This responds to your letter dated June 3, 1992, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a proposed donation by your campaign committee to a charitable organization.

Your letter states that you are giving serious consideration to making a contribution from your campaign committee to The National Fund for the United States Botanic Garden ("the Fund"). By letter dated April 30, 1992, Ms. Karen Carlin, the President of the Fund, informed the Commission that the Fund is incorporated as a "private, non-profit organization . . . to raise money from public and private sources for the construction of the National Garden." The garden will be located in Washington and within the area adjacent to the present United States Botanic Garden. It "will be the only monument to commemorate the Bicentennial of Congress . . . and will serve to educate the public on the great diversity of American plants." In addition, the Commission has learned that the Internal Revenue Service issued an advance ruling (expiring in December 1995) indicating that the Fund qualifies as a public charity for purposes of 26 U.S.C. 170(c) and other provisions of the Internal Revenue Code.

Your request indicates that the garden will feature a nature/resource education center and a pavilion for educational presentations. The Fund proposes to offer you and other members of Congress the opportunity to support the project by purchasing individualized, engraved granite paving stones to be used in pathways surrounding the education center. The donation amount specified by the Fund for each engraved paving stone is \$1,000. You ask whether your campaign committee's donation to purchase a paving stone is "an allowable use of campaign funds."

A statement filed with the Commission indicates that you have registered as a Senate candidate for the 1994 Senate election cycle and that your principal campaign committee is The Moynihan Committee, Inc. The committee's most recent report discloses a cash balance of \$614,143 as of December 31, 1991, with no reported debts owed by the committee to any entity.

The Act provides, in part, that amounts "received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures . . . may be contributed to any organization described in section 170(c)" of the Internal Revenue Code. 2 U.S.C. 439a. Commission regulations similarly provide that excess campaign funds may be contributed to any section 170(c) organization. 11 CFR 113.2(b). The regulations define the phrase "excess campaign funds" to mean "amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures." 11 CFR 113.1(e).

The Commission has previously considered circumstances where a Member of Congress, who was also a candidate for re-election, determined that funds received by his campaign were in excess of amounts necessary to defray his campaign expenditures. The Commission concluded that the Member/candidate could donate the excess funds to a qualified section 170(c) organization. Advisory Opinion 1985-9. See Advisory Opinion 1986-36 (unopposed general election candidate could determine he had excess campaign funds before upcoming election and use them to make contributions to other candidates).

The cited regulations and Advisory Opinion 1985-9 are applicable and relevant to the factual situation you describe. Accordingly, the Commission concludes that the Act and Commission regulations would permit your committee to donate \$1,000 in campaign funds to the Fund at this time.

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 may be 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 as to the possible application of Senate rules to this activity because the interpretation of those rules is not within its jurisdiction.

This response constitutes an advisory opinion concerning application of the Act and Commission regulations to the specific activity set forth in your request. 2 U.S.C. 437f.

Sincerely,

(signed)

Joan D. Aikens
Chairman for the Federal Election Commission

Enclosures (AOs 1986-36 and 1985-9)