

AGENDA DOCUMENT #92-112



FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

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August 7, 1992

MEMORANDUM TO: The Commission
THROUGH: John C. Sprina
Staff Director
FROM: Lawrence M. Noble
N. Bradley Litchfield
SUBJECT: Draft AO 1992-28

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for August 13, 1992.

Attachment

**SUBMITTED LATE
AGENDA ITEM
For Meeting of: AUG 13 1992**

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3 **ADVISORY OPINION 1992-28**

4 Stevenson H. Waltien, Treasurer
5 Leahy for U.S. Senator Committee
6 P.O. Box 53
7 Burlington, VT. 05402-0053

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8 Dear Mr. Waltien

9 This responds to your letter of July 10, 1992,
10 requesting an advisory opinion regarding the application of
11 the Federal Election Campaign Act of 1971, as amended ("the
12 Act"), to the loan of funds by the Leahy for U.S. Senator
13 Committee ("the Committee") to the Vermont Community Loan
14 Fund ("the Fund") and the subsequent repayment of those
15 funds.

16 The Committee is the principal campaign committee of
17 Senator Patrick J. Leahy who is a candidate for re-election
18 in 1992. You state that the Committee wishes to make a
19 \$50,000 interest free loan to the Fund. According to the
20 information you have presented, the Fund is a non-profit
21 corporation promoting low income housing.^{1/}

22 1/ According to the Internal Revenue Service, the Fund is
23 tax exempt under 26 U.S.C. §501(c)(3). The documents
24 submitted with the request include the Fund's articles of
25 incorporation and bylaws. They indicate that the Fund's
26 general purpose is "to provide loans and financial, technical
27 and other support to community based housing and economic
28 development projects for low income and other disadvantaged
29 households." The Fund also seeks to "promote models of
30 ownership or tenant control which prevent speculation and
guarantee that housing remains affordable for successive
generations." The Fund issues "Social Investment Notes" to
persons who may want to invest "in a socially-conscious
manner within Vermont." It offers a range of options "as to
rates, terms and repayment schedules." Additional
information contained in a brochure states that the Fund had,
as of March 20, 1992, assets in investments and gifts
totaling \$1,442,125.

3 A letter of intent included in your request, describing
4 the proposed transaction, states that the Committee will
5 provide \$50,000 to the Fund on or before June 30, 1992. The
6 investment must be repaid in full on or before June 30, 1993,
7 or upon the Committee's earlier written request for
8 repayment. The letter explains that an earlier request for
9 repayment will not be made unless circumstances make it
10 necessary and, in any event, no request will be made before
11 September 30, 1992. Final execution of the transaction is
12 made contingent on a favorable Commission decision in
13 response to the Committee's advisory opinion request. In the
14 event the transaction is not permitted by the Commission, the
15 loan funds must be returned to the Committee within five
16 business days of such notification. In light of that
17 requirement, your request seeks a determination whether the
18 transaction is in accordance with the Act and Commission
19 regulations.

20 The Commission has previously stated that, under the Act
21 and Commission regulations, a candidate and the candidate's
22 campaign committee have wide discretion in making
23 expenditures to influence the candidate's election, but may
24 not convert excess campaign funds to personal use. 2 U.S.C.
25 §§431(9) and 439a; Advisory Opinions 1992-4 and 1992-1.^{2/}
26 In past opinions, the Commission has determined that

27
28 ^{2/} Because your request does not indicate that Senator
29 Leahy will obtain any personal benefit from the transaction,
30 the Commission need not address whether the personal use
prohibition of 2 U.S.C. §439a would apply in this case.

3 political committees may use their funds to make charitable
4 donations to qualified tax exempt corporations (Advisory
5 Opinions 1992-21 and 1985-9), to create a non-profit
6 tax-exempt foundation (Advisory Opinion 1992-14) and to fund
7 a private trust for a minor child (Advisory Opinion 1986-39).

8 The Commission notes, however, that your transaction
9 differs from the above factual patterns. Rather than making
10 a gift, the Committee wishes to loan funds to the charity
11 with full repayment expected.^{3/} The eventual repayment raises
12 the prospect of the transfer of prohibited funds to the
13 Committee. In the past, the transfer of funds from
14 impermissible sources to political committees through loan
15 repayments has been prohibited. See AFL-CIO v. FEC, 628
16 F.2d. 97 (D.C. Cir, 1980) and a Commission enforcement
17 matter, MUR 2547.^{4/} Commission regulations specifically

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20 ^{3/} In Advisory Opinion 1990-2, a candidate committee
21 wished to collateralize a bank loan sought by a state party
22 committee by placing a \$20,000 certificate of deposit with
23 the lender bank. The Commission treated this as the
equivalent to a transfer of funds for the benefit of the
party committee expressly permitted by section 439a. See
also Advisory Opinion 1981-17.

24 ^{4/} The AFL-CIO v. FEC case involved the repayment of
25 interest free loans made by the AFL-CIO's separate segregated
26 fund to the AFL-CIO itself. The court upheld the Commission
27 position that repayment was barred under 2 U.S.C. §441b which
28 forbids corporate and union contributions. Referring to that
29 prohibition, the court stated that "no part of the monies of
30 a union's segregated fund should be commingled with regular
dues money even on a temporary basis..." See AFL-CIO v FEC,
628 F.2d at 100. MUR 2547 dealt with the repayment of loans
made by the Northern Kentucky Housing Industry PAC to its
connected organization, Home Builders Association of Northern
Kentucky, an incorporated entity. The Commission concluded
that the repayment of the loan violated the Act.

3 provide that where a political committee receives the
4 repayment of a loan, the repayment cannot consist of funds
5 from corporate or union treasuries. See 11 CFR
6 100.7(a)(1)(i)(E) and Advisory Opinion 1981-17 (repayment by
7 state party committee of loans from a Federal candidate
8 committee must be from lawful sources).

9 Under the facts you have presented, the source of
10 repayment of Committee's loan would apparently be from the
11 Fund's corporate treasury, and prohibited by Commission
12 regulations at 11 CFR 100.7(a)(1)(i)(E). The Commission,
13 therefore, concludes that the Fund's repayment of the
14 proposed loan is not permissible under the Act and Commission
15 regulations.^{5/}

16 The Commission expresses no opinion as to any
17 application of the rules of the United State Senate to your
18 activity or any tax ramifications, since those issues are
19 outside the Commission's jurisdiction.

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23 ^{5/} The Commission notes that while the transaction, as
24 presented, is foreclosed by the Act and Commission
25 regulations, the Act would not prohibit the Committee from
26 making a gift to the Fund of either \$50,000 or an amount
27 equal to the interest on a \$50,000 loan. Further, as in
28 Advisory Opinion 1990-2, the Committee could invest its funds
29 with a commercial bank selected by the Fund, and the bank
30 could then make a loan to the Fund that was secured by the
Committee's funds as collateral. The Commission cautions
that if the Fund defaults on the loan and the collateral is
attached by the lender bank, the Committee may not collect or
receive repayment of its investment from the Fund, or from
any other person on behalf of the Fund, given the
prohibitions in 11 CFR 100.7(a)(1)(i)(E).

3 This response constitutes an advisory opinion concerning
4 the application of the Act, or regulations prescribed by the
5 Commission, to the specific transaction or activity set forth
6 in your request. See 2 U.S.C. §437f.

7
8 Sincerely,

9
10 Joan D. Aikens
11 Chairman for the
12 Federal Election Commission

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14 Enclosures (AOs 1992-21, 1992-14, 1992-1, 1992-4, 1990-2,
15 1986-39, 1985-9 and 1981-17)
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