

Liz Holtzman for Senate

JUL 15 10 15 AM '92

July 14, 1992

Federal Election Commission
Office of the General Counsel
999 E. Street, N.W.
Washington, DC 20463

AOR 1992-29

Re: Advisory Opinion Request;
Liz Holtzman for Senate
Identification No. C00253252

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE
JUL 15 PM 3:34

Dear Sir or Madam:

Pursuant to 11 C.F.R. Sections 112.1-112.6, Liz Holtzman for Senate ("the Committee") requests an Advisory Opinion reflecting the Commission's view of the proper procedure to be followed in the situation described below.

On June 12, 1992, as Treasurer of the Committee, I became aware for the first time of a number of undeposited direct mail checks which had been contributed to the Committee in 1991 and early 1992. I had given standing instructions to all Committee personnel that all contributions should be processed promptly, all legal contributions should be deposited promptly and any questionable contributions should be referred immediately to me. Inexplicably, a former employee of the Committee had received these direct mail checks but failed to process or deposit them, and left the checks in a desk drawer without disclosing their existence to me. The checks were found on June 12, 1992, when the former employee's desk was thoroughly cleaned out. The checks, totalling \$2,872, were deposited in the Committee's account on June 19, 1992, within less than 10 days of my becoming aware of their existence. They will remain unspent pending the Commission's response to this request for an Advisory Opinion.



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Federal Regulations, of course, require that contributions be deposited or returned to the contributor within 10 days of the Treasurer's receipt of them. 11 C.F.R. Section 103.3(a). The Committee seeks the Commission's Advisory Opinion that contributions may be deposited within 10 days of the Treasurer's actual receipt of them, though more than 10 days after their receipt by an employee or agent of the Committee, when the Treasurer's actual receipt is delayed by an agent's or employee's disregard of the Treasurer's instructions to process and deposit contributions promptly or to otherwise inform the Treasurer of the existence of the contributions. In view of the political and financial importance of each contribution to a campaign, the Committee urges the Commission to permit the retention and use of these funds under these circumstances.

The Committee believes that this interpretation is consistent with the time limits of Regulation Section 103.3(a), which are triggered by the date of "the Treasurer's receipt." This is distinguished from the timing rules for determining the particular election to which a contribution applies for contribution limitation purposes, which hinges on the date "the contribution is made." See the definition in CFR Section 110.1(b) (6) and underlying substantive provisions such as Section 110.1(b)(2)(11) and Section 110.1(b)(3)(i). Obviously, a committee Treasurer cannot act with respect to contributions until they are actually received by the Treasurer. By contrast, because no action by the Treasurer is required in this aspect, the accounting rules for determining per-election contribution limits should be based on the date the contribution is actually made by the contributor.

Finally, the Committee notes that Regulation Section 103.3(a) prohibits both the deposit and the return of a contribution more than 10 days after the Treasurer's receipt. A committee Treasurer would be in a completely untenable position from the combination of these rules if the refund/return period began prior to the Treasurer's actual receipt of a contribution.

Sincerely,

Mary Cheasty Kornman
Mary Cheasty Kornman
Treasurer