



FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

92 AUG 19 PM 4 00

August 19, 1992

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble *LMN by SEP*
N. Bradley Litchfield *NBL*

SUBJECT: Draft AO 1992-29

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for August 27, 1992.

Attachment

AGENDA ITEM
For Meeting of: AUG 27 1992

DRAFT

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3 **ADVISORY OPINION 1992-29**

4 **Mary Cheasty Kornman, Treasurer**
5 **Liz Holtzman for Senate**
6 **99 Hudson Street**
7 **4th Floor**
8 **New York, New York 10013**

9 **Dear Ms. Kornman:**

10 **This responds to your letter dated July 14, 1992,**
11 **requesting an advisory opinion on behalf of Liz Holtzman for**
12 **Senate ("the Committee" or "the Holtzman Committee")**
13 **concerning application of the Federal Election Campaign Act**
14 **of 1971, as amended ("the Act"), and Commission regulations**
15 **to the processing of contributions received months ago but**
16 **not deposited.**

17 **You are the treasurer of the Holtzman Committee, which**
18 **is the principal campaign committee of Elizabeth Holtzman in**
19 **her campaign for the Democratic nomination for U.S. Senate**
20 **from New York. You had given standing instructions to all**
21 **Committee personnel that all contributions should be**
22 **processed promptly, i.e., that all legal contributions should**
23 **be deposited promptly and all questionable contributions**
24 **should be referred to you. You state that, despite these**
25 **instructions, an employee who is no longer with the Committee**
26 **had received some direct mail checks but failed to process or**
27 **deposit them, and left the checks in a desk drawer without**
28 **disclosing their existence to you. These checks had been**
29 **contributed to the Committee in 1991 and early 1992. You**
30 **became aware of the checks on June 12, 1992, the date on**
which they were found. The checks, which totaled \$2,872,

3 were deposited in the Committee's account on June 19, 1992.
4 You assert that they will remain unspent pending the
5 Commission's response to your request.

6 You cite the Commission regulation requiring that
7 contributions be deposited, or returned to the contributor
8 within 10 days of the treasurer's receipt. 11 CFR 103.3(a).
9 You ask the Commission to determine that contributions may be
10 deposited within 10 days of the treasurer's actual receipt of
11 them, even though the time period is more than 10 days after
12 receipt by a committee's employee or agent, if the
13 treasurer's actual receipt is delayed by the employee's
14 disregard of the treasurer's instructions.

15 Commission regulations at 11 CFR 103.3(a) require that
16 all receipts by a political committee shall be deposited in
17 an account established by the committee as its campaign
18 depository within 10 days of the treasurer's receipt, except
19 that any contribution may be returned within 10 days of the
20 treasurer's receipt. A treasurer must be appointed and in
21 office before a political committee may accept contributions
22 and make expenditures. Nevertheless, the Act and Commission
23 regulations contemplate that the treasurer will have
24 authorized agents to receive contributions and make
25 expenditures for the committee. See 2 U.S.C. §432(a); 11 CFR
26 102.9. Moreover, previous advisory opinions have recognized
27 that committees will have agents whose receipt of
28 contributions is considered the equivalent of the treasurer's
29 receipt and begins the running of the 10 day deposit period.
30

3 Advisory Opinions 1989-21 and 1980-42. It appears from your
4 explanation that the Committee employee who had neglected to
5 deposit the checks was also your agent, and his or her
6 failure to deposit is imputed to the treasurer.

7 The purpose behind the promulgation of 11 CFR 103.3(a)
8 is also significant in this situation. The Commission's
9 Explanation and Justification stated:

10 The 10-day deposit requirement was designed to
11 encourage the prompt disposition of contributions
12 rather than permit "stale" checks to be kept lying
13 around or lost. In addition, some large campaigns
14 have used the date of deposit as the date of
15 receipt for reporting purposes. The 10-day
16 requirement would mean reported receipt dates would
17 be close to actual receipt.

18 House Doc. No. 95-44, 95th Cong., 1st Sess. (1977) at 45.
19 Accordingly, requiring your own receipt before the running of
20 the 10 day deposit period would be contrary to the rationale
21 expressed by the Commission.

22 Based on the foregoing analysis, the Commission
23 concludes that the Holtzman Committee may not retain the
24 amounts represented by the checks that had been mislaid and
25 should refund the contributions to the contributors. Of
26 course, the Committee is free to resolicit those contributors
27 for new contributions, and their refunded former
28 contributions would not count against their section 441a
29 limits.

30 This response constitutes an advisory opinion
concerning application of the Act, or regulations prescribed
by the Commission, to the specific transaction or activity

3 set forth in your request. See 2 U.S.C. §437f.

4 Sincerely,

5
6 Joan D. Aikens
7 Chairman for the
8 Federal Election Commission

9 Enclosures (AOs 1989-21 and 1980-42)
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