



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 28, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-29

Mary Cheasty Kornman, Treasurer
Liz Holtzman for Senate
99 Hudson Street
4th Floor
New York, New York 10013

Dear Ms. Kornman:

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

You are the treasurer of the Holtzman Committee, which is the principal campaign committee of Elizabeth Holtzman in her campaign for the Democratic nomination for U.S. Senate from New York. You had given standing instructions to all Committee personnel that all contributions should be processed promptly, i.e., that all legal contributions should be deposited promptly and all questionable contributions should be referred to you. You state that, despite these instructions, an employee who is no longer with the Committee had received some direct mail checks but failed to process or deposit them, and left the checks in a desk drawer without disclosing their existence to you. These checks had been contributed to the Committee in 1991 and early 1992. You became aware of the checks on June 12, 1992, the date on which they were found. The checks, which totaled \$2,872, were deposited in the Committee's account on June 19, 1992. You assert that they will remain unspent pending the Commission's response to your request.

You cite the Commission regulation requiring that contributions be deposited, or returned to the contributor within 10 days of the treasurer's receipt. 11 CFR 103.3(a). You ask the Commission to determine that contributions may be deposited within 10 days of the treasurer's actual receipt of them, even though the time period is more than 10 days after receipt by a committee's

employee or agent, if the treasurer's actual receipt is delayed by the employee's disregard of the treasurer's instructions.

Commission regulations at 11 CFR 103.3(a) require that all receipts by a political committee shall be deposited in an account established by the committee as its campaign depository within 10 days of the treasurer's receipt, except that any contribution may be returned within 10 days of the treasurer's receipt. A treasurer must be appointed and in office before a political committee may accept contributions and make expenditures. Nevertheless, the Act and Commission regulations contemplate that the treasurer will have authorized agents to receive contributions and make expenditures for the committee. See 2 U.S.C. 432(a); 11 CFR 102.9. Moreover, previous advisory opinions have recognized that committees will have agents whose receipt of contributions is considered the equivalent of the treasurer's receipt and begins the running of the 10 day deposit period. Advisory Opinions 1989-21 and 1980-42. It appears from your explanation that the Committee employee who had neglected to deposit the checks was also your agent, and his or her failure to deposit is imputed to the treasurer.

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

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

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

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

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 1989-21 and 1980-42)