



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

SEP 11 7 10 12

September 11, 1992

MEMORANDUM

TO: The Commission
THROUGH: John C. Surina
Staff Director
FROM: Lawrence M. Noble
N. Bradley Litchfield
SUBJECT: Draft AO 1992-32

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for September 17, 1992.

Attachment

**SUBMITTED LATE
AGENDA ITEM**
For Meeting of: 9-17-92

DRAFT

ADVISORY OPINION 1992-32

John L. Sharman, Treasurer
Michael A. Andrews for Congress Committee
808 Winbern
Houston, TX 77002

Dear Mr. Sharman:

This responds to your letter dated August 7, 1992, on behalf of the Michael A. Andrews for Congress Committee ("the Andrews Committee" or "the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a donation by the Committee.

The Andrews Committee is the principal campaign committee for the re-election of Michael A. Andrews to the House from the 25th District of Texas. You state that, as of the last reporting period, the Committee had \$1,100,901 on hand and no outstanding debts or obligations owed by it. You do not anticipate any future expenditures that would cause the Committee to be a net debtor.

The Committee wishes to send a check for \$6500 to a non-profit, public housing residents' council currently in formation. The council will be a democratically elected body which will represent all residents who live in the Villa Americana complex. The funds of the council are to be used for programming and physical improvements to the property for the benefit of the residents. You believe that the Committee's donation will help residents improve the environment of the previously crime-ravaged and neglected

3 property. You note that the complex is currently in Mr.
4 Andrews' district, but that it will not be within the newly
5 drawn lines of the district from which Mr. Andrews seeks
6 re-election.

7 You explain that the making of the contribution is
8 contingent on three circumstances: confirmation by the
9 Department of Housing and Urban Development that the council
10 has a democratically elected board, obtaining a tax
11 identification number, and "working towards legal non-profit
12 status."

13 The Act and Commission regulations provide, in part,
14 that excess campaign funds may be used for a variety of
15 specified purposes that are expressly made lawful, including
16 contributions to any organization described in section 170(c)
17 of the Internal Revenue Code, and "for any other lawful
18 purpose." 2 U.S.C. §439a; 11 CFR 113.2. No such amounts,
19 however, may be converted for personal use.^{1/} Commission
20 regulations define the phrase "excess campaign funds" to mean
21 "amounts received by a candidate as contributions which he or
22 she determines are in excess of any amount necessary to
23 defray his or her campaign expenditures." 11 CFR 113.1(e).
24 In addition, the Commission has previously stated that, under
25 the Act and Commission regulations, a candidate and his or
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27
28 ^{1/} Section 439a does not bar personal use of funds, within
29 limits, for members of Congress who were members on January
30 8, 1980, but who do not serve in the 103d Congress or a later
Congress. 11 CFR 113.2(e)(5). Mr. Andrews began his service
on January 3, 1983.

3 her campaign committee have wide discretion in making
4 expenditures to influence the candidate's election, but may
5 not convert excess funds to personal use. 2 U.S.C. §439a.
6 Advisory Opinions 1992-28, 1992-4, and 1992-1.

7 In past opinions, the Commission has determined that
8 political committees may use their funds to make charitable
9 contributions to qualified tax exempt corporations and to
10 create a non-profit tax exempt foundation. Advisory Opinions
11 1992-21, 1992-14, and 1985-9. Even when an entity does not
12 qualify under 26 U.S.C. §170(c), a donation by a candidate's
13 committee may be permissible as a use for any other lawful
14 purpose. In Advisory Opinion 1986-39, the Commission
15 concluded that a defeated candidate's committee could use
16 excess funds to establish a private trust for the sole
17 benefit of a minor child. The child was not related to the
18 candidate, and the trust would not confer a financial benefit
19 on the candidate. See also Advisory Opinion 1992-14.

20 In view of the fact that the donation to the council
21 will not benefit Mr. Andrews in any financial respect, the
22 Commission concludes that the proposed donation is
23 permissible for purposes of the Act and Commission
24 regulations. The Andrews Committee should report the
25 donation as an "other disbursement." 2 U.S.C. §434(b)(4)(G)
26 and (6)(A); 11 CFR 104.3(b)(2)(v1)(A) and (4)(v1).

27 The Commission expresses no opinion about the tax
28 ramifications of this activity, or on the application of any
29 other Federal or state law outside the Commission's
30

3 jurisdiction.

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

8 Sincerely,

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

13 Enclosures (AOs 1992-28, 1992-21, 1992-14, 1992-4, 1992-1,
14 1986-39, and 1985-9)
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