



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 24, 1992

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

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

You explain that the making of the contribution is contingent on three circumstances: confirmation by the Department of Housing and Urban Development that the council has a

democratically elected board, obtaining a tax identification number, and "working towards legal non-profit status."

The Act and Commission regulations provide, in part, that excess campaign funds may be used for a variety of specified purposes that are expressly made lawful, including contributions to any organization described in section 170(c) of the Internal Revenue Code, and "for any other lawful purpose." 2 U.S.C. 439a; 11 CFR 113.2. No such amounts, however, may be converted for personal use.<sup>1/</sup> Commission regulations define the phrase "excess campaign funds" to mean "amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures." 11 CFR 113.1(e). In addition, the Commission has previously stated that, under the Act and Commission regulations, a candidate and his or her campaign committee have wide discretion in making expenditures to influence the candidate's election, but may not convert excess funds to personal use. 2 U.S.C. 439a. Advisory Opinions 1992-28, 1992-4, and 1992-1.

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

Provided that Congressman Andrews does not hold or derive a personal financial interest in the council to which he will make a contribution, the Commission concludes that the proposed donation is not a conversion of excess campaign funds to personal use and is therefore permitted by the Act and Commission regulations. The Andrews Committee should report the donation as an "other disbursement." 2 U.S.C. 434(b)(4)(G) and (6)(A); 11 CFR 104.3(b)(2)(vi)(A) and (4)(vi).

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

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)

Scott E. Thomas  
Vice-Chairman for the Federal Election Commission

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

#### ENDNOTES

1/ Selection 439a does not bar personal use of funds, within limits, for members of Congress who were members in January 8, 1990, but who do not serve in the 103d Congress or a later Congress. 11CFR 113.2(e)(5). Mr. Andrews began his service on January 3, 1983.