FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 17, 1992

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-38

Christine Varney, Chief Counsel
Clinton/Gore Campaign
P.O. Box 615
Little Rock, Arkansas 72203

Dear Ms. Varney:

This responds to your letter dated October 26, 1992, as supplemented by letter dated November 6, 1992, requesting an advisory opinion concerning application of the Presidential Election Campaign Fund Act, the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed loan by the Clinton/Gore Compliance Fund ("the Fund") to the operating general election account of the Clinton/Gore Campaign.

Your request states that the Fund was established on May 22 (all dates herein are 1992) as an affiliated committee of the Clinton/Gore '92 Campaign Committee ("the Campaign" or "the committee") and pursuant to Commission regulations. The relevant regulations permit a presidential campaign, which receives general election funding under chapter 95 of the Internal Revenue Code, to also accept contributions for a legal and accounting compliance fund. Such contributions, and the use of same, are governed by the Act and Commission regulations.

Your request explains that the Campaign anticipates cash flow demands between November 4 and December 3 which "will result in nondeferable payments of approximately 1 million dollars being required prior to Secret Service travel reimbursements being received." The post-general election expenditures required to be made by the committee reflect several different purposes which include: payroll expenses and related taxes ($844,500), telephone lines and services ($550,000), consulting fees ($125,000), printing and production fees ($110,000).

You state that the Secret Service's "inability to provide timely reimbursement of any recoverable travel related costs creates a serious cash flow shortage in the 30 days after the general election."

(Emphasis in original.) According to the request, the committee expects $1.2 million in reimbursements from the Secret Service for expenses up to and including those incurred on November 3, but not yet (as of November 6) billed to the Service. However, before receiving these reimbursements "the payables demand on the Clinton/Gore Campaign--which cannot be postponed--will total approximately 1 million dollars."

The committee proposes to obtain from the Fund "a one time loan" of $1 million. The loan proceeds from the Fund would be deposited in the committee's general election account after November 3 and then be used to pay the described expenses which are due prior to the committee's "receivables being fully collected." You indicate that "collection of the accounts receivable will be used to restore the Fund" either within the expenditure report period, which ends on December 3, or no later than when the cited Secret Service reimbursements are received. You add that use of the loan proceeds "to defray qualified campaign expenses will not cause the Clinton/Gore Campaign to exceed the general election expenditure limit."

The issue presented by the request is whether the Act or Commission regulations permit the temporary augmentation of Title 26 funding to a presidential campaign for the general election by means of a post-general election loan from the campaign's legal and accounting compliance fund, if the loan is repaid upon the campaign's receipt of reimbursement payments made by the United States Secret Service. The Commission concludes that under the circumstances presented, and subject to the conditions set forth herein, the described loan and its terms of repayment are permitted.

In general, the election campaign of a major party presidential candidate who receives the full amount of payments from the Secretary of the Treasury, pursuant to 26 U.S.C. 9004, must limit its campaign expenditures to that amount. 2 U.S.C. 441a(b)(1) and 26 U.S.C. 9003(b)(1). Such a campaign is also barred from accepting any contributions from other sources to defray qualified campaign expenses. 26 U.S.C. 9003(b)(2).

The contribution ban does not, however, apply to contributions that are made to a legal and accounting compliance fund ("GELAC fund") established in accordance with Commission regulations. 11 CFR 9003.3(a). Furthermore, expenditures by a GELAC fund for legal and accounting services provided solely to ensure compliance with the Act are not subject to the expenditure limit. 11 CFR 9002.11(b)(5). Other pertinent Commission regulations also provide exceptions from expenditure limits and allow certain expenses to be paid from the GELAC fund.

For example, the regulations permit the GELAC fund to make loans to the campaign account of a qualified presidential candidate in order to defray qualified campaign expenses that are incurred before the campaign receives Title 26 Federal funding. Upon receipt of Federal funds such a loan must be repaid to the GELAC fund within 15 days. 11 CFR 9003.3(a)(2)(i)(G), 9003.4(b)(2). The loans allowed by this regulation are somewhat analogous to those made in anticipation of future payments to the campaign by the Secret Service for transportation services.

In this connection, the regulations state that the GELAC fund may be used to defray unreimbursed costs incurred by the general election campaign in providing transportation and related services to the United States Secret Service and to national security staff. 11 CFR

9003.3(a)(2)(i)(H), 9004.6(a). Furthermore, net expenditures (net means less any reimbursements received from the Secret Service) for this purpose are considered as qualified campaign expenses, but are not subject to the overall spending limit of the general election campaign. 11 CFR 9004.6(a). Read together, the cited Secret Service transportation regulations allow the campaign to pay unreimbursed Secret Service costs without having to count such payments toward the spending ceiling and also allow those costs to be paid from the GELAC fund. See Explanation and Justification for 11 CFR 9004.6 at 56 Fed. Reg. 35903 (July 29, 1991).

In the circumstances presented, the proposed loan would be made only on the basis of anticipated Secret Service reimbursements, and thus it comports with the underlying principle of the regulations. The committee will use the loan proceeds from the Fund to pay nondeferable qualified campaign expenses that, but for the temporary hiatus in obtaining Secret Service reimbursements, would have to be paid from committee operating funds, whether derived from Treasury payments made pursuant to 26 U.S.C. 9006(b), or from reimbursements previously made by the United States Secret Service to satisfy valid invoices submitted to the Service by the committee or its agents. In essence, the short term loan by the Fund merely enables the committee to make payment of urgent obligations very promptly after the election and prior to receiving payment on accounts receivable owed to the committee by the Secret Service. Moreover, the loan does not convey to the committee additional funds to defray new campaign expenses not already incurred before the loan proceeds are received.

The Commission emphasizes that approval of the Campaign's loan proposal is conditioned on its use of the proceeds to defray only qualified campaign expenses and the Campaign's compliance with the expenditure limit. In addition, the Campaign must immediately apply all receipts that result from the Secret Service reimbursements to satisfy any outstanding loan balance owed by the committee to the Fund. Furthermore, any shortfall realized by the Campaign because the Secret Service for valid reasons rejects payment of a committee (or a committee agent's) invoice, will result in an improper use of contributions made to the Fund and have repayment or other consequences under the Act and Commission regulations. See 26 U.S.C. 9003(b)(2), 9007(b)(3), 9012(b)(1).

Finally, the Commission notes that the loan made by the Fund to the committee, and the loan repayments by the committee to the Fund, are required to be reported by each committee in accordance with the applicable provisions of the Act and Commission regulations. See 2 U.S.C. 434(b)(3)(E), 434(b)(5)(D), 434(b)(8); and 11 CFR 104.3(a)(4)(iv), 104.3(b)(4)(iii), 104.3(d), 104.11.

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