



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 15, 1993

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-42

Arlene M. Willis, Assistant Treasurer
Lewis for Congress Committee
P.O. Box 247
Redlands, CA 92373

Dear Ms. Willis:

This responds to your letters of December 3, December 8, 1992, and January 4, 1993, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to your proposal for the issuance of replacement checks to cover a deposit that was lost during the 1992 campaign.

The Lewis for Congress Committee (the "Committee") is the principal campaign committee of Representative Jerry Lewis. During the 1992 campaign, you state that the Committee received \$6,150 in contributions from four committees and six individuals.^{1/} The Committee immediately filed a 48 hour notice of receipt reporting two of these contributions in the amounts of \$2,000 and \$1,000, since the checks were received within 20 days prior to the election. See 11 CFR 104.5(f). You state that on October 21, 1992, these ten contribution checks were then mailed to the Committee's bank.^{2/} A copy of the Committee's record of the deposit, including a copy of each check was enclosed with your request.

This deposit never arrived at the Committee's bank, a fact which you state has been confirmed by conversations with the accounting division of the bank. You also state that a trace by postal authorities, conducted at the Committee's request, failed to locate the missing deposit checks. The contributors whose checks were part of the deposit were then contacted, and they have informed the Committee that their checks are still outstanding and unpaid. You now ask if it would be permissible, assuming that contributors agree to replace the "lost" checks, that each replacement check be treated as being made for 1992 general election rather than attributed to

the 1994 primary election. The most recent report filed by the Committee indicates that it has no outstanding debts.

Commission regulations at 11 CFR 102.8(a) provide that the date of receipt for a contribution received by a committee is the date the committee treasurer, or any person acting for the committee, obtains possession of the contribution. Under 11 CFR 103.3(a), all receipts of 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. Commission regulations limit the contributions that an authorized committee may accept with respect to an election already held. A committee may only accept a contribution for a past election if the amount does not exceed the amount of net debts outstanding on the date the contribution is received. 11 CFR 110.1(b)(3)(iii), 110.2(b)(3)(ii).

In Advisory Opinion 1992-29, the Commission considered the situation where a campaign committee failed to process 1991 and early 1992 contribution checks within the 10 day period, but sought to deposit them several months later. Noting that the failure occurred because campaign staff had misplaced the checks, the Commission required that the contribution amounts be refunded instead.^{3/} However, your situation is distinguishable. The factual documentation that you have provided, including copies of the checks, the bank deposit slip, your reporting efforts, as well as your subsequent contacts with the contributors and the bank, indicate that the campaign took reasonable steps to comply with the Act and Commission regulations in regard to depositing these contributions after you accepted them.

Your situation is also distinguishable from the situation reviewed by the Commission in Advisory Opinion 1989-10. In that opinion, a committee wished to solicit new contributions to cover the committee's financial losses due to a former treasurer's embezzlement of committee funds. The Commission determined that the embezzlement by itself did not create a new committee debt and that the committee could only accept contributions in amounts equal to its net debt. See Advisory Opinion 1989-10. What distinguishes your situation is that, unlike Advisory Opinion 1989-10, the funds in question had not yet been deposited in the campaign account; further, there is no indication of wrongdoing on the part of any Committee personnel. Instead, the persuasive documentary evidence you have provided indicates that the loss was beyond the Committee's control.

Upon consideration of the documentation you have provided the Commission concludes that, in this specific circumstance, if the donors of the replacement checks designate them for the 1992 general election, the replacement checks will take the place of those lost checks disclosed in your 48 hour disclosure reports or listed on your contemporaneously prepared bank deposit slip. The Commission assumes that the Committee will take steps to assure that the replacement checks correspond with the lost originals as to amount and donor and that all replacement checks will be received by the Committee, if at all, within a reasonable time after receipt of this opinion.^{4/}

Furthermore, if the original checks are subsequently found they must be returned to the contributors and not deposited. In addition, the Commission strongly suggests that the donors be

advised to stop payment on their lost checks to prevent future credit to the Committee's bank account if they are later found and deposited in error.

This response constitutes an advisory opinion concerning the 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
Chairman for the Federal Election Commission

Enclosures (AOs 1992-29 and 1989-10)

ENDNOTES

1/The dates on these checks written by the contributors range from October 2, 1992, to October 21, 1992.

2/According to your request, the deposit was mailed from Redlands, California to the Community Bank in Redlands, California.

3/In Advisory Opinion 1992-29, a former employee of the Liz Holtzman for Senate Committee had received \$2,872 in direct mail checks and had placed the checks in a desk drawer without alerting the campaign treasurer.

4/The Commission would consider a period that expires 30 days from the date this opinion is received to be a reasonable period for the Committee to obtain each replacement check that may be offered. See, by analogy, 11CFR 103.3(b)(2).