



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

April 23, 1993

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1993-4

David Syme, Treasurer  
Christopher Cox Congressional Committee  
P.O. Box 8088-C  
Newport Beach, CA 92658

Dear Mr. Syme:

This responds to your letter of February 17, 1993 requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a method the Christopher Cox Congressional Committee ("the Committee") wishes to use in making payments to its vendors.

The Committee is the principal campaign committee of U.S. Representative Christopher Cox. You state that the Committee wishes to pay its bills "electronically" by utilizing the service of CheckFree Corporation ("CheckFree") of Columbus, Ohio, a payment processing company. Included in your request is part of the literature provided to customers by CheckFree describing its program.

The Committee, through its personal computer, a computer "modem," and a software package called "Quicken," would electronically transmit messages to CheckFree instructing it to debit certain amounts from the Committee's checking account, and make payment to various vendors on particular dates.<sup>1/</sup> Some payees would be set up to receive electronic payments, while others would receive a printed check issued by CheckFree but drawing only on Committee funds. You state that the Committee would receive a confirmation of the payment in its bank statement. For providing this service, CheckFree would receive a monthly fee paid by the Committee. In seeking to implement this program, you request guidance to determine whether this method of defraying expenditures is permissible under the Act and, if permitted by the Commission, what record keeping requirements the Committee should follow.

Under the Act and Commission regulations, all committee disbursements (other than petty cash disbursements of \$100 or less to any person in connection with a single purchase or transaction) must be made by check or similar draft drawn on an account at its designated campaign depository. See 2 U.S.C. 432(h)(1) and 11 CFR 102.10, 103.3(a).<sup>2/</sup>

While the Commission has not specifically examined the application of these provisions to computerized billpayer services, it has considered the application of section 102.10 in a similar situation. In Advisory Opinion 1982-25, the Commission addressed the request of a principal campaign committee that wanted to transmit funds by wire transfer to a vendor's bank as an advance payment for custom made campaign materials. The committee proposed to record the transaction in its records as a disbursement and expected to receive documentation evidencing its receipt of the items ordered. The Commission concluded that "a wire transfer of funds from the Committee's campaign depository to a creditor's bank account would fall under the broad heading of 'similar draft' provided that adequate documentation of the transaction is provided and maintained by the Committee."

In important aspects, your situation is comparable to that approved by the Commission in Advisory Opinion 1982-25. The current electronic banking and bill paying procedures now available to consumers and businesses are closely analogous to the wire payment services that have been utilized since the 1960's. In both, while paper records are maintained to document the transactions and thus fulfill record keeping needs, there are no articles of paper that serve as the operative commercial instruments. See John F. Dolan, Fundamentals of Commercial Activity: A Lawyer's Guide 534 (1992).

The Commission notes that a later advisory opinion discussed the related application of 11 CFR 103.3(a). In Advisory Opinion 1986-18, a political committee wished to place its funds in a Cash Management Account ("CMA") managed by Merrill Lynch. One method through which the funds would be accessed was by means of a credit card which would directly debit the account. Citing 11 CFR 103.3(a), the Commission concluded that committee funds could be placed in the account only for investment purposes and that, while the funds were in the account, the credit card could not be used as means to access the funds to make disbursements. Rather, before the funds could be used to make disbursements, they would have to be transferred to one of the institutions specified by the Act as capable of serving as a depository for committee funds. Merrill Lynch did not qualify as one of the permitted campaign depositories, as defined by 11 CFR 103.2.

However, your situation is distinguishable. The difficulty with the proposal in Advisory Opinion 1986-18 was not that the Committee's funds could be accessed by a method other than use of a check but, rather, that the funds were not paid to the vendor from a qualified depository. However, your use of the services provided by CheckFree involves the use of an account at a qualified banking depository entity and an electronic "draft" or written check drawn on Committee funds deposited at that entity. Therefore, the Commission concludes that your proposal to make Committee disbursements through a computer driven billpayer service, which has access to Committee funds on deposit in a qualified bank depository of the Committee, would be permitted under the Act and Commission regulations.

The Commission draws your attention to various provisions of the regulations that would require the maintenance of the documentation adequate to insure the disclosure, record keeping and audit requirements of the Act. Under 11 CFR 102.9(b)(2), the Committee should maintain receipts and invoices from all its vendors including those who receive payment by means of your proposal. The Commission notes that in your proposal some vendors would still be paid by conventional written checks issued by CheckFree. Section 102.9(b)(2) requires that these canceled checks be preserved for record keeping purposes. Further, 11 CFR 104.14(b) requires that the Committee maintain its bank records and statements.<sup>3/</sup> These would presumably document the electronic transfers made to vendors without use of written checks. Regarding the reporting requirements, the payments made to vendors under your proposal would be disclosed in the same manner as all the payments to vendors normally would. They would be reported as operating expenditures on the Committee's Schedule B, or as unitemized operating expenditures for payments that total \$200 (or less) to the same payee within the calendar year. 11 CFR 104.3(b)(2), (b)(4)(i).

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

Enclosures (AOs 1986-18 and 1982-25)

#### ENDNOTES

1/ The Committee's Statement of Organization indicates that its designated campaign depository is First Los Angeles Bank. The Commission assumes that the Committee's checking account at this bank will be used in its proposal.

2/ There is no direct legislative history regarding these provisions. However, these provisions seem designed to support the general statutory intention of the Act and the regulations to assure a complete and reliable "paper trail" for record keeping, disclosure and audit purposes. See Advisory Opinion 1986-18(Commissioner Josefiak concurring).

3/ In your situation, the Commission notes that section 104.14(b) can be reasonably construed to require the Committee to preserve banking records in the form of computer magnetic media (such as disks, diskettes or tapes) pertaining to these payment transactions.