



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 22, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1993-10

Delia Castillo De Colorado
Comite Amigos Tito Colorado
PO Box 192772
San Juan, PR 00919-2772

Dear Mrs. Castillo De Colorado:

This refers to your May 13, and June 28, 1993, letters concerning the application of the Federal Election Campaign Act of 1971 ("the Act"), as amended, to various uses of excess campaign funds from the 1992 campaign of your husband, Antonio J. Colorado.

You state that Mr. Colorado was a Federal candidate in 1992 for Resident Commissioner of Puerto Rico. According to reports filed with the Commission, Mr. Colorado's principal campaign committee, Comite Amigos Tito Colorado (the "Committee"), had cash on hand totaling \$56,604 and no debts as of December 31, 1992. Mr. Colorado wishes to use funds which you identify as excess campaign funds for the three purposes detailed below.

(1) You state that Mr. Colorado's party, the Popular Democratic Party (the "Party"), will elect its leader, the President of the Party, during the first part of 1994. As part of this process, you explain that there may be a primary in which Mr. Colorado plans to be a candidate. You state that a committee will be formed to support his candidacy, and Mr. Colorado wishes to transfer excess campaign funds to this committee for the purpose of supporting his election as Party President.^{1/}

(2) You state that the current government in Puerto Rico is planning to hold a November 1993 plebiscite to determine the political status of the Island. Mr. Colorado and other associates wish to create a non-profit corporation, not related to any political party, to campaign for retention of the commonwealth status. You state that this corporation will not be subject to United States tax law because its area of operation will be restricted to Puerto Rico. You state that Mr. Colorado

wishes to transfer the Committee's excess campaign funds for the use of this corporation in its campaign.

(3) Finally, you state that Mr. Colorado is planning to become a candidate in the 1996 election for Governor of Puerto Rico. You state that as part of his preparation for the 1996 campaign, Mr. Colorado would like to study the reasons for his 1992 election loss and to gather research on the issues that interest voters. Therefore, you state he wishes to use excess campaign funds to conduct a survey of public opinion in these areas.

Your request wishes guidance from the Commission on whether these are permissible uses of excess campaign funds. You further affirm that in all of the above instances the funds will never be used for the personal benefit of Mr. Colorado since the Committee understands and abides by the provision that "prohibits said [personal] use, except for reimbursement of any ordinary and necessary expenses that Mr. Colorado may incur on behalf of the committee and corporation described in [purposes] one and two above."

Several provisions of the Act and Commission regulations are applicable to your proposed uses of Committee funds. The use of "excess campaign funds" by political committees is regulated by 2 U.S.C. 439a. This section states:

Amounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures, and any other amounts contributed to an individual for the purpose of supporting his or her activities as a holder of Federal office, may be used by such candidate or individual, as the case may be, to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office, may be contributed to any organization described in section 170(c) of title 26, or may be used for any other lawful purpose, including transfers without limitation to any national, State, or local committee of any political party; except that no such amounts may be converted by any person to any personal use, other than to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office.

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). If the use of excess campaign funds for the proposed purposes does not constitute a "personal use" and is not otherwise "unlawful," it is permissible under the statute. See Advisory Opinion 1993-6.

The Committee has no debts and has determined that the funds in the proposed transactions are excess campaign funds. The first and third parts of your proposal involve the use of these excess funds for future non-Federal campaigns. In past opinions, the Commission has determined that the use of excess campaign funds for future Federal and local or state races would not violate the personal use prohibition of section 439a. See Advisory Opinions 1986-5, and 1980-113.^{2/} Following these precedents, the use of the Committee's excess campaign funds for purposes related to Mr. Colorado's 1996 Gubernatorial campaign would be permitted. Similarly, while no opinion has dealt with the use of excess campaign funds in campaigns to seek office in a political

party organization, these prior opinions would suggest that such use is not unlawful or personal use under section 439a.^{3/} Therefore, the Commission concludes that the Committee may use excess campaign funds for both purposes as presented in the first and third parts of your proposal.

Regarding the second part of your proposal, the Act, as quoted above, specifically states that excess campaign funds may be contributed to any tax exempt organization described in section 170(c) of title 26. However, you have proposed donations to a charitable, non-profit organization which is not subject to United States tax law. The Commission has found that transfers and donations to other recipients where section 170 does not apply may still be permissible under the "any other lawful purpose" clause of section 439a as long as it did not involve conferring a personal benefit on the former candidate. See Advisory Opinion 1986-39.^{4/} You have explicitly stated that Mr. Colorado would not receive compensation for his involvement in the proposed non-profit corporation beyond reimbursement of ordinary and necessary expenses incurred on its behalf. Under these circumstances, the use of excess campaign funds to create and fund the non-profit corporation you describe would be permissible under the Act.

The Commission emphasizes that if any provisions of Puerto Rican law are applicable to your proposed transfers or donations, such provisions would not be pre-empted by 2 U.S.C. 453 and 11 CFR 108.7. Thus, the application of any Puerto Rican law concerning, for example, the amount of such transfers or donations, or their reporting by any transferee entity, would not be superseded or pre-empted by the Act or regulations of the Commission. See Advisory Opinions 1986-39 and 1986-5.

The Commission expresses no opinion as to the possible tax ramifications of the proposed transaction, because that issue is not within its 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
Chairman

Enclosures (AOs 1993-6, 1986-39, 1986-5, 1983-27, and 1980-113)

ENDNOTES

1/ You further explain that, following the election of the Party President, the Party will nominate a candidate to run for Governor of Puerto Rico. This may or may not be the person occupying the Party presidency. As noted below, Mr. Colorado is also interested in seeking election to this office.

2/ In Advisory Opinion 1986-5, a former Congressional candidate wished to transfer his committee's excess campaign funds to his campaign for County prosecutor. Advisory Opinion 1980-113 dealt with the desire of a Senate candidate to use his excess campaign funds for future state wide office.

3/ This conclusion would be consistent with the Internal Revenue Code's treatment of the personal use of excess campaign funds. Under 26 U.S.C. 527(e)(1) and (2) and IRS Reg. 1.527-5(c)(1), the transfer of excess campaign funds to a political organization whose function is to influence "the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization" would not be considered the personal use of such funds. See 26 U.S.C. 527(d).

4/ In Advisory Opinion 1986-39, the Commission concluded that a defeated candidate's donation of excess campaign funds to a trust for a child would not, in and of itself, be a prohibited personal use because it would "not benefit [him] in any apparent financial respect."

Advisory Opinion 1983-27 indicated the circumstances where a former candidate's transfer of excess funds to a nonprofit organization could violate section 439a. These were situations where the candidate would "receive any funds from [the organization], including, but not limited to, any compensation, loans, awards, grants, or fellowships, until such time as [the organization] has expended, for purposes unrelated to [the candidate's] personal benefit, the entire amount so donated." The reimbursement of ordinary and necessary expenses incurred on behalf of the foundation, however, was permitted. See Advisory Opinion 1983-27; see also Advisory Opinion 1993-6.