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June 25, 1993

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Advisory Opinion Request

AOR 1993-11

Dear Commissioners:

Pursuant to 2 USC, §437f, I request an advisory opinion on behalf of the Dukakis-Bentsen Committee ("Committee") and its 1988 General Election Legal and Accounting Compliance Fund ("Fund") that, for reasons more fully set forth below, the Fund need not remove any of the $50,000 of funds re-transferred from the Dukakis Gubernatorial Committee ("State Committee") to the Fund in June, 1993[1] so long as these funds are expended exclusively in connection with expenditures permitted to the Fund on account of the 1988 election.

In accordance with Advisory Opinion 1987-16, the State Committee in 1987 transferred certain assets together with $380,000 in funds to the Dukakis for President Committee to launch Governor Dukakis' 1988 presidential election campaign. At the conclusion of the 1988 election in winding down its activities the Committee in 1989 transferred from the Fund to the State Committee $380,000. This transfer was made in anticipation of a Fund surplus pursuant to 11 C.F.R. §9003.3(a)(2) which, by reference to 2 U.S.C. §439a and 11 C.F.R. §113.2(d), allows GELAC surplus funds to be used "for any lawful purpose." (This transfer has never been questioned in the audit process or in the Final Audit Report.)

1/ Appropriate filings for this transfer will separately be made. The Committee will comply with existing Commission regulations in C.F.R. 110.3(c)(6).

The Committee has recently received MUR 3449 arising out of the general election audit. There may or may not be more MURs issued by the Commission, notwithstanding that nearly five years have now elapsed since Governor Dukakis' nomination in 1988. As a result of the lengthy FEC proceedings, the Committee has incurred, and is incurring, unanticipated costs, in part because the passage of time makes the reconstruction of events in the distant past more difficult.

In light of this, the Committee and the Fund may have transferred too large a sum to the State Committee in 1989, and the recent $50,000 re-transfer from the State Committee back to the Fund in June, 1993 intends to correct the possibly excessive 1989 transfer.

11 CFR 110.3(d), which prohibits all transfers from a candidate's state committee to his or her federal committee, becomes effective July 1, 1993 in accordance with the announcement contained in the April 7, 1993 Federal Register (58 FR 17967-8). In that announcement the Commission stated:

> Campaign committees that transfer funds before July 1, 1993 and use those funds for special elections held before that date are not affected by the rule announced today. Those transfers are governed by the Commission's prior rule at 11 CFR 110.3(c)(6).
>
> Campaign committees that transfer funds before July 1, 1993 <u>in anticipation of an election held after that date</u> have not violated the rule announced today. However, in order to prevent active commingling of federal and nonfederal campaign funds in the candidate's federal campaign account, any funds or assets transferred from a nonfederal committee that remain in the federal campaign account on July 1, 1993 must be removed from that account before July 31, 1993. Committees should use the identification method described in 11 CFR 110.3(c)(5)(ii) to determine which nonfederal funds are still in the campaign account as of July 1, 1993 and must be removed. Failure to remove those funds before July 31, 1993 is a violation of the rule announced today. (emphasis added)

The $50,000 re-transfer recently made was not "in anticipation of an election held after [July 1, 1993]," so the

wording of the second paragraph quoted above requiring removal before July 31, 1993 does not by its terms apply to the re-transfer.[2] To remove any doubt that these re-transferred funds will be used only in connection with the 1988 election and not some future election, I have specifically conditioned this opinion request on the re-transferred funds being "expended exclusively in connection with expenditures permitted to the Fund on account of the 1988 election." The first paragraph quoted above read in light of the second paragraph also indicates a clear intent not to reach elections held before July 1, 1993. However, the reference to "special" elections in that paragraph does not cover this case and makes this request prudent. The policy clearly manifest in these two paragraphs is to draw a divide between pre- and post-July 1, 1993 elections. No reasons exist supporting different regulatory treatment of, for example, a 1988 "special" Congressional election and the 1988 presidential election.

Pending receipt of the Commission's opinion, the Committee has placed the re-transferred $50,000 into a special account of the Fund in its normal depository. If the Commission declines to rule as requested, I request in the alternative that the Commission allow the Committee sixty days from the date of its Opinion to "remove" the $50,000 from the Fund by means of payment of otherwise validly incurred GELAC expenditures or by re-transfer to the State Committee.

Very truly yours,

Daniel A. Taylor

Daniel A. Taylor

cc: The Honorable Michael S. Dukakis
Lawrence Noble, Esq.
Susan Propper, Esq.

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2/ Nor is the Fund a "campaign account" within the meaning of the second paragraph.