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FEDERAL ELECTION COMMISSION  
WASHINGTON DC 20463

93 JUL 29 11:5:10

July 29, 1993

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Jonathan M. Levin  
Senior Attorney

SUBJECT: Draft AO 1993-11

**AGENDA ITEM**  
For Meeting of: AUG 5 1993

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for August 5, 1993.

Attachment

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2  
3 **ADVISORY OPINION 1993-11**

4 Daniel A. Taylor  
5 Hill & Barlow  
6 One International Place  
7 Boston, MA 02110-2607

**DRAFT**

8 Dear Mr. Taylor:

9 This responds to your letter dated June 25, 1993,  
10 requesting an advisory opinion on behalf of the  
11 Dukakis-Bentsen Committee ("the Committee") and its 1988  
12 General Election Legal and Accounting Compliance Fund  
13 ("the GELAC fund") concerning application of the Federal  
14 Election Campaign Act of 1971, as amended ("the Act"), and  
15 Commission regulations to a transfer between the Dukakis  
16 Gubernatorial Committee ("the State Committee") and the GELAC  
17 fund.

18 In accordance with Advisory Opinion 1987-16, the State  
19 Committee, in 1987, transferred certain assets plus \$380,000  
20 to the Dukakis for President Committee to launch Governor  
21 Dukakis' presidential primary campaign. In winding down its  
22 activities, the Committee transferred \$380,000 from its GELAC  
23 fund to the State Committee in 1989. You state that this  
24 transfer was made in anticipation of a surplus in the GELAC  
25 fund pursuant to 11 CFR 9003.3(a)(2) which, by reference to 2  
26 U.S.C. §439a and 11 CFR 113.2, allows GELAC funds remaining  
27 after payment of all expenses related to the general election  
28 to be used "for any lawful purpose."

29 As a result of the Commission audit process and  
30 enforcement actions that may arise with respect to the

3 Committee, the Committee has incurred and will incur  
4 unanticipated legal costs. You state that, in light of these  
5 developments, the GELAC fund may have transferred too large a  
6 sum to the State Committee in 1989. The State Committee  
7 re-transferred \$50,000 back to the GELAC fund in June 1993.

8 Unlike the general election campaign committee of a  
9 publicly-funded major party presidential candidate, the  
10 campaign's GELAC fund, which is not publicly-funded, is  
11 subject to the contribution limitations and prohibitions of  
12 political committees. Expenditures by a GELAC fund for legal  
13 and accounting services provided solely to ensure compliance  
14 under the Act are not subject to an expenditure limit. 11  
15 CFR 9002.11(b)(5). Commission regulations, however, specify  
16 the purposes for which the GELAC fund may normally be used;  
17 some of these purposes are not for legal and accounting  
18 compliance. See 11 CFR 9003.3(a)(2)(i).

19 Your concern is whether the GELAC fund may retain the  
20 \$50,000 in view of a Commission regulation which became  
21 effective on July 1, 1993. This regulation states, in  
22 pertinent part, "Transfers of funds or assets from a  
23 candidate's campaign committee or account for a nonfederal  
24 election to his or her principal campaign committee or other  
25 authorized committee for a federal election are prohibited."  
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3 11 CFR 110.3(d).<sup>1/</sup>

4 The Federal Register notice of April 7, 1993, announcing  
5 the effective date of the regulation, explains how the rule  
6 is to be applied during the 1994 election cycle. It states  
7 that campaign committees that transfer funds before the  
8 effective date and use those funds for special elections held  
9 before that date are not affected by the rule. Those  
10 transfers would be governed by the Commission's prior  
11 regulation at 11 CFR 110.3(c)(6) which permitted the  
12 transfers under certain conditions pertaining to the total  
13 amount that may be transferred, the application of the Act's  
14 limits and prohibitions, the timing of the transfer, and the  
15 registration of the transferor committee. 58 Fed. Reg.  
16 17967, at 17968 (April 7, 1993).

17 The notice proceeded to state that committees  
18 transferring funds before July 1 in anticipation of an  
19 election held after that date had not violated the rule.  
20 It further stated: "However, in order to prevent active  
21 commingling of federal and nonfederal campaign funds in the  
22 candidate's federal campaign account, any funds or assets  
23 transferred from a nonfederal committee that remain in the  
24

25 1/ The regulation goes on to say:

26 However, at the option of the nonfederal committee,  
27 the nonfederal committee may refund contributions,  
28 and may coordinate arrangements with the  
29 candidate's principal campaign committee or other  
30 authorized committee for a solicitation by such  
committee(s) to the same contributors. The full  
cost of this solicitation shall be paid by the  
Federal committee.

3 federal campaign account on July 1, 1993 must be removed from  
4 that account before July 31, 1993." Id. To determine which  
5 non-Federal funds were still in the Federal account and thus  
6 had to be removed, committees should use the identification  
7 method described in 11 CFR 110.3(c)(5)(11). Id.<sup>2/</sup>

8 Pending the receipt of an advisory opinion, the \$50,000  
9 has been placed in a special account at the GELAC's normal  
10 depository. The Committee intends that the funds be spent  
11 exclusively "in connection with the expenditures permitted to  
12 the Fund on account of the 1988 election." If the Commission  
13 denies your request, you alternatively ask that the  
14 Commission give the Committee 60 days from the date of the  
15 opinion to "remove" the funds by paying "otherwise validly  
16 incurred GELAC expenditures" or by transferring \$50,000 back  
17 to the State Committee.

18 The Commission concludes that, under the conditions set  
19 out in your request, the \$50,000 re-transferred to the GELAC  
20 account does not have to be returned to State Committee by  
21 July 31, 1993, and may be retained in the GELAC account for  
22 the uses you propose.

23 The new regulation is meant to prevent the use of funds  
24 from non-Federal accounts in connection with elections held  
25 after July 1, 1993. The exemption of "special elections"  
26 held before July 1, 1993, was not meant to exclude funds  
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2/ This subsection is applicable insofar as it provides  
29 that the cash on hand is considered to consist of the funds  
30 most recently received by the committee that will be making  
the transfer.

3 transferred and expended in connection with a 1988 regularly  
4 scheduled election from the same treatment. For these  
5 purposes, there is no regulatory distinction between a 1988  
6 regular election and a 1988 special election. The reference  
7 to special elections was to exempt funds transferred and  
8 used for those elections that might be held during the period  
9 between the rule's approval and the effective date of the  
10 regulation. No regular elections were scheduled for that  
11 period. Furthermore, the re-transfer of funds from the State  
12 Committee to the GELAC fund occurred before July 1, 1993.  
13 Hence, the requirement to remove the transferred funds from  
14 the Federal account (i.e., the GELAC fund) does not apply in  
15 the circumstances presented.

16 In giving its approval to your proposal, the Commission  
17 makes two assumptions. The first is that the \$50,000  
18 re-transferred to the GELAC fund consisted of permissible  
19 funds. Massachusetts State law differs slightly from the  
20 Act's limitations and prohibitions, particularly with respect  
21 to labor union contributions, which, although subject to  
22 limits, are permissible under State law. Between the time of  
23 the 1989 transfer from the GELAC fund to the State Committee  
24 and the re-transfer in June 1993, other funds may have been  
25 contributed to the State Committee. The Commission assumes  
26 that the GELAC fund applied the standards of former 11 CFR  
27 110.3(c)(6)(i), the predecessor to the new 11 CFR  
28 110.3(d), and that the \$50,000 is comprised only of funds  
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3 permissible under the Act's limitations and prohibitions.<sup>3/</sup>

4 The second assumption is that no funds that may remain  
5 in the future from the \$50,000 re-transfer may be transferred  
6 from the GELAC fund to another authorized Federal committee  
7 of the same candidate. The Commission notes your  
8 representation that these funds are being used only in  
9 connection with the 1988 presidential elections.

10 This response constitutes an advisory opinion concerning  
11 application of the Act, or regulations prescribed by the  
12 Commission, to the specific transaction or activity set forth  
13 in your request. See 2 U.S.C. §437f.

14 Sincerely,

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17 Scott E. Thomas  
18 Chairman

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<sup>3/</sup> Under that regulation, the cash on hand of the  
26 transferor committee was considered to consist of the funds  
27 it most recently received. The transferor committee had to  
28 be able to demonstrate that such cash on hand contained  
29 sufficient funds at the time of the transfer that complied  
30 with the Act's limitations and prohibitions to cover the  
amount transferred. A contribution was to be excluded from  
the amount transferred if the making or acceptance of it in  
connection with a Federal election was prohibited by the Act.  
In addition, the amount transferred per contributor could not  
exceed the limitations of 11 CFR 110.1 or 110.2.