



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

November 15, 1993

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1993-19

Charles F.C. Ruff  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20044

Dear Mr. Ruff:

This refers to your letter of September 21, 1993, concerning application of the Federal Election Campaign Act of 1971 ("the Act"), as amended, to a proposal to raise funds to retire the debts of the Friends of John Glenn Presidential Committee ("the Committee").

The Committee was Senator Glenn's authorized committee for his 1984 Presidential campaign. You state that the Committee has outstanding obligations of approximately \$3.25 million, owed to roughly 700 creditors.<sup>1/</sup> These debts were incurred, you state, by the Committee chiefly in 1983 and 1984 in connection with Senator Glenn's campaign for the 1984 Democratic Presidential nomination. Senator Glenn has already contributed \$50,000 to the Committee, the maximum allowable contribution for a primary candidate receiving matching funds. You state that many of Senator Glenn's main supporters (and those most likely to give additional funds) have also contributed the maximum allowable amount to the Committee.

You explain that, at the time the Committee incurred these debts, it and its creditors reasonably believed that the Committee would be able to raise enough money to satisfy the debts completely through fundraising efforts conducted during Senator Glenn's 1984 candidacy. The debts themselves, you assert, were incurred "in a commercially reasonable manner."<sup>2/</sup>

However, when Senator Glenn made the decision to end his 1984 Presidential campaign, the Committee did not have sufficient funds to retire its outstanding debts. You state that in the years following the end of the campaign, the Committee through various activities has attempted to raise the needed funds. However, notwithstanding these efforts, a sizable debt remains and,

according to the affidavits of past and current Committee fundraising personnel, the chances of retiring the debt significantly remain small.<sup>3/</sup>

In order to increase the opportunities to reduce the debt and to come to an agreement with its creditors, you state that the Committee wishes to accept additional funds from Senator Glenn and his "at-limit" contributors for the limited purpose of retiring the Committee's debts.<sup>4/</sup> You argue that the special circumstances of this situation -- the asserted fact these debts were incurred in good faith and in a commercially reasonable manner, that they are eight years old with persistent efforts having been made to retire them -- should permit the solicitation and acceptance of the contributions without resulting in a violation of the Act.

#### Lifting the 2 U.S.C. 441a(a) contribution limits

Under the Act, no person is permitted to make contributions to a candidate and that candidate's authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. See 2 U.S.C. 441a(a)(1)(A), and 11 CFR 110.1(b)(1). Furthermore, no multicandidate committee shall make contributions to any candidate and that candidate's authorized committee for any Federal election which, in the aggregate, exceed \$5,000. 2 U.S.C. 441a(a)(2)(A).

As your request notes, the Commission has consistently applied these limits to contributions made following a Federal election for the purpose of retiring debts arising from the campaign for that election. See 11 CFR 110.1(g) and Advisory Opinions 1990-17, 1985-2, 1983-39, and 1982-64.<sup>5/</sup> This position, again as noted in your request, has been upheld in a U.S. Court of Appeals decision. See Federal Election Commission v. Ted Haley Congressional Committee, 852 F.2d 1111, (9th Cir. 1988).

An examination of the prior advisory opinions, Commission regulations and case law does not support making an exception for the Committee in the circumstances mentioned in your request. The Commission notes that several of the advisory opinions had applied section 110.1(g) in situations where significant time had passed between the new proposed fundraising and the prior election.<sup>6/</sup> Furthermore, the claim that the underlying transactions that created the debt were commercially reasonable is not a relevant argument for granting your request; neither is the expectation of payment on the part of creditors nor the efforts made to satisfy those expectations by fundraising.<sup>7/</sup> Therefore, the Commission concludes that the Committee's knowing acceptance of additional funds from its "at-limit" prior contributors for the purpose of retiring the Committee's debt would be prohibited by 2 U.S.C. 441a(a)(1)(A), 441a(a)(2), 441a(f) and 11 CFR 110.1(g).<sup>8/</sup>

#### Lifting the 26 U.S.C. 9035 personal funds limit.

Generally, a Federal candidate may make unlimited contributions to his or her own campaign from personal funds. See 11 CFR 110.10(a). However, under 26 U.S.C. 9035, a Presidential primary candidate receiving Federal matching funds is limited to contributions (or expenditures) of \$50,000 from that candidate's personal funds or the personal funds of immediate family members. See 11 CFR 9035.2.

Prior advisory opinions have not addressed the application of section 9035 in debt payment situations. However, the Commission notes the truly singular situation presented in your request, the passage of nearly ten years since the debt was incurred, the size of the obligation, and the fundraising efforts made to retire the debt. Therefore, the Commission concludes that in these exceptional circumstances, Senator Glenn may now spend an unlimited amount of his personal funds for the purpose of retiring the Committee's debt.

This advisory opinion leaves undisturbed the Commission's conclusion in Advisory Opinion 1987-4 which permitted transfers from Senator Glenn's principal Senate campaign committee to the 1984 Presidential campaign to pay a portion of the Committee's debt. See Advisory Opinion 1987-4. Furthermore, the Commission notes that in a recent audit repayment decision, the Commission did allow a transfer of funds between an authorized committee of a candidate for Congress and the same individual's Presidential committee, where the Presidential committee did not have funds available to meet its debt obligations to the United States Treasury. See Gephardt for President Committee, Inc. Audit, October 22, 1992, open meeting discussion.

Under these precedents, the Committee may accept an unlimited transfer of any excess campaign funds that are available from Senator Glenn's 1992 Senate campaign. Furthermore, if Senator Glenn becomes a candidate for the 1998 Senate election cycle, excess campaign funds from that campaign could also be transferred to the Committee for the 1984 campaign debt.<sup>2/</sup>

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)

Trevor Potter  
Vice Chairman

Enclosures (AOs 1990-17, 1989-22, 1987-4, 1985-2, 1983-39, and 1982-64)

#### ENDNOTES

1/ The major part of this debt consists of four secured loans held by Ohio banks totaling approximately \$2 million (including accumulated interest).

2/ The question of whether the 1984 debts, including the bank loans, were incurred in compliance with the Act is not presented or addressed in this opinion. In another context the Commission previously reviewed the legality of the bank loans. See Consent Order, Federal Election Commission v. Bank One, Columbus, N.A., et al., Civil Action No. C2-86-1082 (S.D. Ohio, May 20, 1987.)

3/ Your September 21 letter includes affidavits of various individuals who from 1984 until 1993 were responsible for the Committee's fundraising efforts. These affidavits repeat and provide further details for the representations made in your request.

4/ As described in your request, the term "at-limit" contributors refers to individuals and committees which have already made contributions up to the limits permitted by 2 U.S.C. 441a(a) with respect to Senator Glenn's 1984 Presidential campaign.

5/ The Commission recently reaffirmed its position on this issue. In connection with consideration of testimony regarding the revision of Commission regulations concerning committee debt settlement, the Commission rejected a proposal made by a commenter that would have removed contribution limits for Presidential candidates who were defeated and choose not to run again for President in the succeeding election. The commenter argued that this allowance would enable indebted Presidential committees to seek additional contributions from those who had given the maximum amount permitted under the Act. The Commission, however, concluded that removing the limits would be contrary to the plain wording of the statute as well as some of the basic principles underlying the Act and the public financing statutes. See 55 Fed. Reg. 26381 (June 27, 1990) [Explanation and Justification of Regulations on Debts Owed by Candidates and Political Committees].

6/ For example, the period of time was seven years in Advisory Opinion 1985-2, five years in Advisory Opinion 1983-39 and four years in Advisory Opinion 1982-64.

7/ If the underlying transactions creating a campaign debt owed to corporate vendors were not commercially reasonable or if the creditors had not expected repayment, the original transactions themselves could have been considered violations of Act's prohibitions against corporate contributions under section 441b. See 11 CFR 116.3 and 11 CFR 114.10 (1983). Similarly, if bank loans to a campaign were not made in the ordinary course of business, on a basis which assured repayment and bearing the usual and customary rate of interest of the lending institutions, those loans would be considered contributions to the campaign in violation of section 441b. See 2 U.S.C. 431(8)(B)(vii), 441b(b)(2).

8/ Your request specifically deals with contributions by "at limit" contributors. The Committee, of course, may solicit and accept contributions for Senator Glenn's 1984 Presidential campaign debt from past contributors to that campaign who have not yet reached their section 441a(a) limits. It may also solicit and accept contributions from those who have not made contributions to the 1984 Glenn Presidential campaign.

9/ However, the Commission cautions that funds so transferred must contain contributions solicited for the 1998 campaign and not solicited from contributors for retiring the 1984 Presidential campaign debt. The Commission noted in Advisory Opinion 1989-22 that where facts and circumstances demonstrate that a current campaign is merely a sham or subterfuge, whereby the candidate intends only to raise and spend funds to retire outstanding debts from a previous election and not to conduct an active campaign for the next election, the Commission will presume that the contributions made in those circumstances were made to retire the debts of the past election. See Advisory Opinion 1989-22.