



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 24, 1995

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-35

Susan Alter
463 East 19th Street
Brooklyn, NY 11226

Dear Ms. Alter:

This refers to your letters received on November 14, 1994 and February 14, 1995, on behalf of the Susan Alter for Congress Committee '92 (the "Committee"), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the Committee's request to discontinue its reporting obligation.

Documents filed with the Commission indicate that the Committee was your principal campaign committee in your 1992 campaign for the Democratic nomination for election to the U.S. House of Representatives from New York State's 10th Congressional District. General reference sources state that you were a member of the New York City Council from 1978 until the end of 1994.

You state that the Committee received the proceeds of a \$150,000 short term loan obtained from Safra National Bank ("Safra") in August of 1992.^{1/} On January 7, 1993, you took out a \$150,000 mortgage from Shearson Lehman Hutton Mortgage Corporation on your personal residence. The proceeds from this mortgage transaction were used to pay the Safra loan.^{2/} You explain that you went to Safra for the original short term loan because of the primary election deadline which did not provide enough time to go through the mortgage process initially.

You state that the 1993 mortgage was sold to another entity, and you are now making the monthly payments on this (30 year) mortgage which will take 28 years to repay. You further declare that you intend to use only your own personal funds to pay for the mortgage. You explain that you no longer hold public office and do not intend to seek public office in the future. You further indicate that the campaign treasurer is no longer available to continue reporting for the Committee. Because of these factors, you believe that the burden to continue your reporting

obligation on this transaction would be an undue hardship. You therefore wish to discontinue filing FEC reports and to terminate the Committee.^{3/}

Under the Act and Commission regulations, the principal campaign committee of a candidate is required to file reports of its receipts and disbursements. 2 U.S.C. 434(a)(2). The amount of outstanding debts and obligations owed by a political committee must be continuously reported until extinguished either by payment in full, or by lawful settlement subject to review by the Commission. 2 U.S.C. 434(b)(8); 11 CFR 104.3(d), 104.11. Furthermore, a political committee may terminate its reporting status only upon filing a termination report or statement indicating that it will no longer receive any contributions or make any disbursements, and that it has no outstanding debts or obligations. 2 U.S.C. 433(d)(1).

Applying these provisions to the Committee's situation, it appears that the Committee may not yet terminate its filing duties because of its current debt situation. Your request acknowledges that, in addition to the loan discussed above, the Committee still owes \$4,785 to other vendors. Regarding the bank loan itself, you substituted a mortgage on your own residence for the original security you provided on the original loan and have assumed the payment obligation. However, the original loan itself was campaign related.^{4/} The materials also indicate that your original intention was to obtain a mortgage to secure the campaign loan, and only the demands of time forced you to seek a short term loan as an interim step. Therefore, the surviving mortgage, which constitutes a refinancing of the earlier short term loan, must be considered a committee related expense and debt, and it must be reported as such.^{5/}

The Commission does not possess general authority to waive reporting requirements. However, Commission regulations and Commission Directive No. 45 set out certain criteria under which an insolvent committee may be considered for administrative termination, either on request or on the Commission's own initiative. See 11 CFR 102.4(a) and Commission Directive No. 45 (effective date October 22, 1994); see also Advisory Opinion 1990-15.

The facts in your opinion, however, indicate that several criteria for administrative termination are not yet met. For example, section 102.4(a) lists, among the factors to be considered, whether a committee's aggregate reported financial activity in one year is less than \$5,000. The Committee's total aggregate financial activity in each of the years of its existence exceeds this amount.^{6/}

While the Commission concludes that the Committee may not terminate at this time, it does not necessarily follow that the Committee must continue to report for the entire term of the 28 year mortgage. The Committee may be permitted to terminate its filing obligations well before the final payment date on the mortgage. The Commission notes that Directive No. 45 sets out an additional procedure for administrative termination which is initiated by the Commission absent a written request from the political committee. A key element is that the committee under consideration for termination was established for an election which occurred five or more years prior to the time of the Commission review.^{7/} Under the facts of your situation, review for termination would be possible in late 1997. Although the Commission at this time can not determine whether administrative termination will be granted in 1997 (following the five year

period required by Directive 45), the Commission urges you to apply for such administrative termination at that time.

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)

Danny L. McDonald
Chairman

Enclosures (AOs 1994-26, 1990-15 and Commission Directive No. 45, effective date October 22, 1994)

1/ According to the documents you have provided, the original loan from Safra was secured by the assets provided by the candidate equaling \$200,000. These included a certificate of deposit and bonds.

2/ In its 1992 third quarterly report, the Committee reported the loan from Safra as a loan from the candidate to the Committee. The Committee subsequently amended the report to indicate that the source of the funds for the loan was Safra. The Committee's 1993 year end report included a letter from Safra stating that the loan was repaid.

3/ Besides loans from the candidate and the 1993 mortgage, the Committee's 1993 year end report, schedule D, itemizes \$11,285 in debts and obligations (excluding loans) owed by the Committee. You state in your February 14 submission that the current outstanding balance on these debts is \$4,785 and that these debts will be paid over the next few months from your personal funds.

4/ Further, under 2 U.S.C. 432(e)(2), in both loan transactions, you were considered to be acting as agent for the Committee.

5/ The focus of this opinion is the ongoing reporting consequences of the transactions described in your request. The re-financing of the campaign related debt through Shearson Lehman Hutton Mortgage Corporation is not addressed in this opinion because any issue raised by that transaction would relate only to past conduct, rather than to prospective conduct. However, 2 U.S.C. 431(8)(B)(vii) and 11 CFR 100.7(b)(11) provide that among the requirements which exempt a loan from coverage as a contribution is that the loan is made by a national bank (among other qualified lending institutions). See Advisory Opinion 1994-26.

6/ The least financial activity (combined receipts and disbursements) reported by the Committee in a year was \$8,161 in 1993. The Committee failed to file reports in 1994. However, without even considering the continuing payments made to extinguish the campaign related mortgage,

your request indicates that in 1994 you paid \$6,500 to Committee vendors. These payments would be considered in kind contributions by you to the Committee.

7/ There are additional criteria which the Committee would have to meet. See 11 CFR 102.3 and 102.4; see also FEC Commission Directive No. 45, page 4.