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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, DC 20463

AOR 1994-37

Dear Sir/Madam:

We are writing on behalf of Representative Charles E. Schumer of the Ninth Congressional District of New York to request an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, and the Commission's rules and regulations thereunder (collectively, the "Act"), to certain joint federal and nonfederal political activities that may be undertaken by Congressman Schumer. In particular, we request that the Commission issue an advisory opinion (i) permitting Congressman Schumer to share the use of certain facilities and paid staff between a campaign committee seeking his reelection to Congress and a second committee conducting exploratory activities (and ultimately, perhaps, a separate campaign) relating to a nonfederal office; and (ii) confirming the propriety of the allocation procedures described below with respect to expenditures made in connection with the federal and nonfederal activities.

At the present time, Congressman Schumer intends to (i) establish a campaign committee to promote his reelection to Congress in 1996 (the "Federal Committee"); and (ii) begin exploring the possibility of running for Governor of New York in the 1998 elections. The Federal Committee will be funded by transfer of excess funds from Congressman Schumer's 1994 campaign committee and will seek additional contributions as permitted by the Act. With respect to the 1998 Governor's race, Congressman Schumer wishes to raise funds and make certain "testing the waters" expenditures. In the event that Congressman Schumer decides to run for Governor, funds raised during the "testing the waters" period will be used for the campaign. Such

fundraising and expenditures will be made by a campaign committee (the "State Committee") organized and operated in conformity with state law and that, as required by 11 U.S.C. §110.8(d)(1), will be completely separate from the Federal Committee. As you know, New York law permits certain contributions to state candidates that are not allowable under the Act, but appropriate individuals may be solicited to contribute to both committees.

Although the committees will have separate chairs, treasurers and bank accounts, certain paid employees may perform services on behalf of both committees and it is anticipated that the committees will use the same office space at least until, and if, Congressman Schumer formally becomes a candidate for Governor. 11 C.F.R. §110.8(d)(3) permits campaigns subject thereto to share "personnel and facilities" so long as expenditures are allocated between the campaigns. Accordingly, we seek confirmation that proceeding in accordance with §110.8(d)(3) will not, under the present facts, contravene the separate campaign committee and campaign organization requirements of §110.8(d)(1) and (d)(2).

We also seek confirmation that allocating administrative and fundraising expenses (including rent, utilities, office supplies, salaries, travel and other fundraising costs) relating to the two committees on the basis of a modified funds received method is permitted under the Act. The Commission has established, by regulation, the general principle that expenditures on behalf of one or more clearly identified federal candidates and one or more clearly identified nonfederal candidates shall be attributed to each candidate according to the benefit reasonably expected to be derived. 11 C.F.R. §106.1(a)(1). Although that regulation does not explicitly address situations where the federal and nonfederal candidates or potential candidates are the same individual, we believe that its basic allocation principle should apply when an individual establishes separate federal and nonfederal committees or engages in political activities that may benefit both federal and nonfederal elections. We further note that the facts here are comparable to those described in AO 1978-67: "Sharing Campaign Headquarters with State Candidate". There, the Commission concluded that a federal candidate and a state candidate could establish a combined campaign headquarters so long as the costs of the shared facilities were allocated between the respective campaigns in a manner that "equitably reflected the use and benefit to each campaign". In addition, 11 C.F.R. § 102.17 expressly

contemplates joint fundraising activities between federally-registered and unregistered political committees. See also AO 1977-38: "Retirement of State Campaign Debt."

In this case, we submit that the level of contributions received by the respective committees would provide a reasonable measure of the relative benefits realized by the committees from administrative and fundraising expenditures and would provide an equitable basis for allocating such expenses between the committees. We propose to use a procedure similar to that prescribed in 11 C.F.R. § 106.5(g) and § 106.6(e). However, rather than attempting to estimate in advance the federal and nonfederal funds likely to be received by the committees (which may be difficult on an ongoing basis), we propose that funds be transferred either to the Federal Committee or to an allocation account in such a manner that, at the end of each calendar month, the total expenditure by each committee for shared facilities and services over the life of the arrangement will be proportionate to the total contributions received by the respective committees during such period of time. Such an allocation methodology would be consistent with allowable procedures under 11 C.F.R. § 102.17.

We also request confirmation that, should Congressman Schumer incur expenses in connection with political activities outside the counties of the Ninth Congressional District (i.e., Kings and Queens Counties) and not directly relating to his reelection as a Representative, such expenses may be paid by the State Committee. Examples of the contemplated expenditures would include, but would not be limited to:

(i) expenditures for travel outside the counties of the Ninth Congressional District for political activities at which Congressman Schumer's reelection to Congress is not urged and funds are not solicited for that purpose; 1/

(ii) expenditures for statewide polling not relating to Congressman Schumer's reelection to Congress;

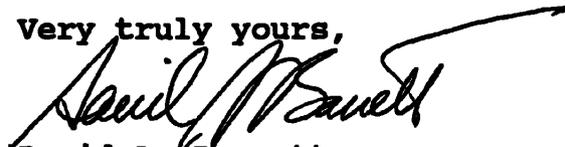
1/ In the event that such travel includes stops directly related to Congressman Schumer's reelection to Congress, as well as stops not related to such federal campaign, we understand that the allocation procedures set forth in 11 C.F.R. § 106.3 would apply.

(iii) contributions to candidates for office outside the counties of the Ninth Congressional District.

We believe that although the foregoing types of activities might conceivably benefit indirectly Congressman Schumer's future federal campaigns, their major purpose would not be to promote or raise funds for his nomination or election to federal office. Accordingly, expenditures by the State Committee would be permissible. See, e.g., AO 1982-56: "Candidate's Appearance in Another Candidate's Commercial"; AO 1981-37: "Participation of Congressman in Television Forum."

Should the Commission require any further information in connection with this advisory opinion request, please contact the undersigned.

Very truly yours,



David A. Barrett