



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

FEB 9 10 07 AM '95

February 9, 1995

**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 1995-3

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for February 16, 1995.

Attachment

**AGENDA ITEM**  
For Meeting of: FEB 16 1995

**DRAFT**

ADVISORY OPINION 1995-3

Don White, Treasurer  
Gramm '96 Committee  
P.O. Box 565087  
Dallas, TX 75356

Dear Mr. White:

This responds to your letter dated January 5, 1995, on behalf of the Gramm '96 Committee, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to simultaneous fundraising by a candidate for a 1996 U.S. Senate campaign and a 1996 presidential campaign.

Senator Phil Gramm of Texas intends to run simultaneously for President of the United States and Senator from Texas in 1996. The Gramm '96 Committee ("the Senate committee") is the principal campaign for Senator Phil Gramm's 1996 reelection campaign for Senator from Texas. Its Statement of Organization was filed with the Commission on August 29, 1991. The Senate committee has raised contributions for the 1996 Senate campaign, and plans to continue to do so. Phil Gramm for President Committee ("the presidential committee"), the principal campaign committee for Senator Gramm's 1996 presidential campaign, registered with the Commission on November 14, 1994, and plans to raise funds pursuant to 26 U.S.C. §9031, et seq.<sup>1/</sup>

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<sup>1/</sup> You have not presented any facts or posed any questions regarding funds received by the 1996 presidential campaign from Senator Gramm's 1990 Senate campaign. Accordingly, the Commission does not express or imply any opinion as to the legality of any transfers of funds made by the 1990 Senate

3 Senator Gramm intends "to maintain completely separate  
4 principal campaign organizations" for the two offices. The  
5 Senate committee and the presidential committee will not  
6 transfer any funds to each other, make loans or loan  
7 guarantees to the other, or provide goods or services to the  
8 other. In addition, each committee will have its own  
9 separate staff and facilities and pay its own staff and  
10 expenses in full.

11 You wish to know whether the Act and regulations permit  
12 Senator Gramm to raise funds simultaneously for his two  
13 candidacies. You also wish to confirm that individuals and  
14 multicandidate committees would have separate limits, under 2  
15 U.S.C. §441a(a)(1)(A) and (2)(A) respectively, for  
16 contributions to each committee.

17 The Act and Commission regulations contemplate that a  
18 person may maintain concurrent candidacies for two separate  
19 Federal offices.<sup>2/</sup> The Act regulates the transfer of funds  
20 between campaign committees of individuals seeking more than  
21 one Federal office. 2 U.S.C. §441a(a)(5)(C). Commission  
22 regulations provide that a candidate seeking more than one  
23 Federal office must designate separate principal campaign  
24 committees and establish completely separate campaign  
25 organizations. 11 CFR 110.8(d)(1). In addition, no goods or  
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28 (Footnote 1 continued from previous page)  
campaign to the 1996 presidential campaign.

29 <sup>2/</sup> Texas law permits an individual to seek simultaneously  
30 the presidency and a Senatorial seat. Texas Election Code  
Ann. §141.033 (Vernon 1986).

3 services and no funds, including loans and loan guarantees,  
4 of one campaign may be transferred to or used by the other  
5 campaign of a candidate actively seeking more than one office  
6 concurrently. 11 CFR 110.8(d)(2) and 110.3(c)(5). See 2  
7 U.S.C. §441a(a)(5)(C)(i). Commission regulations allow dual  
8 campaigns to share personnel and facilities as long as  
9 expenditures are allocated between the two campaigns and  
10 payments made from each campaign account reflect the  
11 allocation. 11 CFR 110.8(d)(3). Advisory Opinion 1994-37.  
12 This allowance is not available, however, when one of the  
13 campaigns is for the presidency and the candidate is  
14 receiving presidential primary matching funds or general  
15 election public financing. 11 CFR 110.8(d)(3).

16 The proposed conduct of the two campaigns comports with  
17 these requirements. Senator Gramm intends to set up entirely  
18 separate campaigns, with no sharing of facilities or  
19 personnel and no transfers of funds. Under these  
20 circumstances, the two campaigns may raise funds separately  
21 for the senatorial and presidential primaries, and the  
22 senatorial campaign may raise funds for the Senate general  
23 election.<sup>3/</sup> The fact that Senator Gramm may qualify for and  
24 receive Federal matching payments for his presidential  
25 campaign during the same period does not alter this result.

26 Commission regulations provide specifically for the  
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29 <sup>3/</sup> See 11 CFR 102.9(e)(2) providing for the refund or other  
30 disposition of general election contributions if Senator  
Gramm does not receive the senatorial nomination.

3 acceptance of contributions by concurrent campaigns and the  
4 limits applicable to contributions to those campaigns.  
5 According to 11 CFR 110.1(f), if an individual is a candidate  
6 for more than one Federal office, a person may contribute up  
7 to \$1,000 per election to the individual's campaign for each  
8 office as long as each contribution is designated by the  
9 contributor in writing for a particular office, and the  
10 candidate maintains separate campaign organizations,  
11 including separate principal campaign committees and separate  
12 accounts. 11 CFR 110.1(f)(1)(and (2)). An additional  
13 condition is that the authorized committees of one campaign  
14 may not make transfers, loans, or contributions to, or make  
15 expenditures on behalf of, the authorized committees of the  
16 other campaign. 11 CFR 110.1(f)(3). These concepts also  
17 apply to contributions to each campaign by multicandidate  
18 committees, whose limit is therefore \$5,000 per election for  
19 each office. 11 CFR 110.2(f).

20 Under the conditions presented by this request and set  
21 out in the regulations, the Senate committee and the  
22 presidential committee may each receive contributions subject  
23 to the separate limits of 2 U.S.C. §441a(a)(1)(A) and (2)(A).  
24 The Commission also notes the special relevance of  
25 110.1(f)(3) to the presidential committee's receipt of  
26 Federal matching funds. None of these funds may be used for  
27 the purpose of influencing the senatorial reelection  
28 campaign. See 26 U.S.C. §§9032(9), 9038(b)(2), and  
29 9042(b)(1); 11 CFR 9032.9, 9034.4, and 9038.2. In addition,  
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3 even if Senator Gramm ceases to pursue actively one of the  
4 offices, transfers of funds may not be made between the 1996  
5 Senate and 1996 presidential campaigns. This is because the  
6 Senator will have elected to receive Federal matching funds.  
7 11 CFR 110.3(c)(5)(iii). See 2 U.S.C. §441a(a)(5)(C)(iii).

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

12 Sincerely,

13  
14 Danny L. McDonald  
15 Chairman

16 Enclosure (AO 1994-37)  
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