



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 16, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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.^{1/}

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

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

The Act and Commission regulations contemplate that a person may maintain concurrent candidacies for two separate Federal offices.^{2/} The Act regulates the transfer of funds between campaign committees of individuals seeking more than one Federal office. 2 U.S.C. 441a(a)(5)(C). Commission regulations provide that a candidate seeking more than one Federal office must designate separate principal campaign committees and establish completely separate campaign organizations. 11 CFR 110.8(d)(1). In addition, no goods or services and no funds, including loans and loan guarantees, of one campaign may be transferred to or used by the other campaign of a candidate actively seeking more than one office concurrently. 11 CFR 110.8(d)(2) and 110.3(c)(5). See 2 U.S.C. 441a(a)(5)(C)(i). Commission regulations allow dual campaigns to share personnel and facilities as long as expenditures are allocated between the two campaigns and payments made from each campaign account reflect the allocation. 11 CFR 110.8(d)(3). Advisory Opinion 1994-37. This allowance is not available, however, when one of the campaigns is for the presidency and the candidate is receiving presidential primary matching funds or general election public financing. 11 CFR 110.8(d)(3).

The proposed conduct of the two campaigns comports with these requirements. Senator Gramm intends to set up entirely separate campaigns, with no sharing of facilities or personnel and no transfers of funds. Under these circumstances, the two campaigns may raise funds separately for the senatorial and presidential primaries, and the senatorial campaign may raise funds for the Senate general election.^{3/} The fact that Senator Gramm may qualify for and receive Federal matching payments for his presidential campaign during the same period does not alter this result.

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

Under the conditions presented by this request and set out in the regulations, the Senate committee and the presidential committee may each receive contributions subject to the separate limits of 2 U.S.C. 441a(a)(1)(A) and (2)(A). The Commission also notes the special relevance of 110.1(f)(3) to the presidential committee's receipt of Federal matching funds. None of these funds may be used for the purpose of influencing the senatorial reelection campaign. See 26 U.S.C. 9032(9), 9038(b)(2), and 9042(b)(1); 11 CFR 9032.9, 9034.4, and 9038.2. In addition,

even if Senator Gramm ceases to pursue actively one of the offices, transfers of funds may not be made between the 1996 Senate and 1996 presidential campaigns. This is because the Senator will have elected to receive Federal matching funds. 11 CFR 110.3(c)(5)(iii). See 2 U.S.C. 441a(a)(5)(C)(iii).

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

Enclosure (AO 1994-37)

1/ 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 campaign to the 1996 presidential campaign.

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

3/ See 11 CFR 102.9(e)(2) providing for the refund or other disposition of general election contributions if Senator Gramm does not receive the senatorial nomination.