



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 14, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-29

David W. Syme, Treasurer
Christopher Cox Congressional Committee
P.O. Box 8088-C
Newport Beach, CA 92658

Dear Mr. Syme:

This responds to your letters dated July 13 and August 9, 1995, requesting an advisory opinion on behalf of the Christopher Cox Congressional Committee ("the Cox Committee") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the disbursement of contribution funds to the court-appointed receiver of the contributor's companies.

The Cox Committee is the principal campaign committee of Representative Christopher Cox of California. In 1988 and 1990, the Cox Committee received a total of \$2,000 in contributions from William E. Cooper.^{1/} In 1994, Mr. Cooper and two other owners of the First Pension Corporation pled guilty to defrauding thousands of investors. A Federal District Court Judge appointed a receiver to oversee companies affiliated with First Pension and recover assets for the benefit of the defrauded investors.

On June 7, 1995, the First Pension Ad Hoc Investors' Committee ("Investors"), a committee formed to work with the defrauded investors, sent a letter to Mr. Cox. The letter briefly describes Investors and explains that it and other investors are working closely with the receiver. Investors informed Mr. Cox of Mr. Cooper's unlawful activities and explained that, at a meeting of several hundred investors, a decision was made to contact the congressman because of Mr. Cooper's contributions to his campaign during the time of the fraudulent activities. Investors stated that it believed the contributions were paid with money stolen from investors, and requested that Mr. Cox "return [to the receiver] all contributions which came from Mr.

Cooper or any of his related entities."^{2/} You state that Investors does not contest that the contributions were made from Mr. Cooper's personal checking account.

You ask if the Cox Committee may accede to the request of Investors and "refund" the contributions to the receiver, rather than the donor. You note that neither Mr. Cox, members of his family, persons employed by the congressman, nor any persons sharing an ownership interest with him in any business or investment within the past three years "stands to receive any funds that might be distributed by the receiver."

As you note, the amounts you propose to have the Cox Committee disburse will be sent to the receiver and not to Mr. Cooper himself. The receiver is the manager of entities or assets that were owned in part or controlled by Mr. Cooper, and must control the assets in the same manner as the owner would be bound to do if he were in possession. 28 U.S.C. 959(b). Nevertheless, the receiver is an officer of the court and is not an agent or employee of any particular party to the litigation in which he was appointed. See United States v. Smallwood, 443F.2d 535, 539 (8th Cir. 1971). Instead, he or she "stands in the position of a representative and a protector of the interests of creditors, shareholders, depositors, and others, in the property in receivership." 65 Am. Jur. 2d Receivers §139 (1972). In addition, the disbursement of these funds is not mandated as a refund or return of contributions that are excessive or unlawful under the Act. Based on these factors, the Commission does not characterize the proposed disbursement by the Cox Committee as a "refund" to the contributor.^{3/}

The Commission, instead, examines these proposed disbursements with respect to the rules on permissible use of the Cox Committee's funds. The Act and Commission regulations provide that the candidate or his campaign committee may use excess campaign funds for a number of listed purposes and for any lawful purpose, but may not convert such funds to the personal use of the candidate or any other person. 2 U.S.C. 439a; 11 CFR 113.2(d). Although no specific use of campaign funds discussed in the Commission regulations on personal use is applicable in this situation, the regulations define "personal use" generally as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g). Where a specific use is not listed as personal use, the Commission makes a determination on a case-by-case basis. 11 CFR 113.1(g)(1)(ii).

In explaining the application of the case-by-case approach, the Commission

reaffirm[ed] its long-standing opinion that candidates have wide discretion over the use of campaign funds. If the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.

Commission Regulations on Personal Use of Campaign Funds, Explanation and Justification, 60 Fed. Reg. 7862, 7867 (February 9, 1995).

The request by Investors for the disbursement of funds stems from the fact that Mr. Cooper contributed an equivalent amount to the Cox Committee. Were it not for Mr. Cox's past

campaign activities, i.e., the acceptance of contributions from Mr. Cooper, Investors' request for the equivalent of these funds would not have been made. See Advisory Opinion 1995-23.

The Commission notes your stipulation of the fact that your family members or those associated with you will not receive any funds distributed by the receiver. The Commission must also address the personal use of the funds by others.

Although the funds would be used to satisfy Mr. Cooper's obligations to the defrauded investors and eventually would be available for personal use by those investors, the Commission does not view the disbursement as being for anyone's personal use under the circumstances presented. The Commission acknowledges that there appears to be no legal mandate or court order that the Cox Committee make the requested disbursement. Nevertheless, a request is being made by persons acting in concert with a court-appointed officer, and the disbursement would be made pursuant to a court-supervised recovery of assets, assets that should not have been made available to the contributor. A small amount of those funds reached the Cox Committee, and the proposed disbursement would be made to satisfy the purposes of that court-supervised process.^{4/} The use of the funds to pay Mr. Cooper's obligations to the investors and the ultimate use by the investors are therefore secondary outcomes for the purposes of the personal use prohibition. In principle, it is the same use as occurs with any lawful disbursement by a political committee once it is received by the payee; e.g., from the profits earned by a committee vendor or the salary drawn by a committee employee.

Based on the foregoing, the Commission concludes, that under the particular circumstances you present, the Cox Committee may disburse the \$2,000 to the receiver. The Commission notes that the Act and Commission regulations do not obligate you to make this disbursement.

The Cox Committee should report the disbursement to the receiver under the category of "Other Disbursements." 11 CFR 104.3(b)(2)(vi)(A). Since the disbursement will exceed \$200, it should be itemized with a disclosure of the recipient (i.e., the receiver), the date, the amount, and the purpose. You should state the purpose with a short explanation in which you make a reference to this Advisory Opinion. 11 CFR 104.3(b)(4)(vi).

The Commission expresses no opinion as to the application of the rules of the House of Representatives to your proposal, nor as to any tax ramifications, since those issues are outside the Commission's jurisdiction.

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)

Lee Ann Elliott

Vice Chairman

Enclosure (AO 1995-23)

1 According to the materials you submitted and disclosure reports filed by the Cox Committee, Mr. Cooper contributed \$500 for the 1988 general election, \$500 for the 1990 primary election, and \$1,000 for the 1990 general election.

2 The letter asks Mr. Cox to contact the receiver if there are any questions; it appears, therefore, that this request was made with the approval of the receiver.

3 The Commission notes that another factor to consider is the length of time that has elapsed between the making of the contributions and the proposed disbursement of equivalent funds. The fact that the contributions were made five to seven years ago does not, by itself, preclude a disbursement by a political committee from being classified as a refund. Nevertheless, a request for a "refund" from a candidate's committee by someone who contributed several years previously may necessitate scrutiny under 2 U.S.C. 439a and 11 CFR 113.2 as to the purposes of the request.

4 This situation is therefore distinguishable from one in which an individual has won a judgment against someone who contributed to a candidate's committee, and the judgment creditor seeks funds from the committee. In the latter situation, neither a court nor anyone acting in a court-appointed capacity is requesting that the committee make a disbursement.