



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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August 13, 1996

**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: Revised Draft AO 1996-28

At the Open Session on August 1, 1996, the Commission considered Draft Advisory Opinion 1996-28 (Agenda Document #96-78). At that meeting, this office proposed to the Commission that the agenda draft be revised to reach a different conclusion in view of further information provided by the requester's counsel in his comments on the draft. The Commission then voted to return the draft opinion to this office for redrafting pursuant to the meeting discussion and to have this office circulate the revised draft on a tally vote basis.

The new draft permits Mr. Ritter's personal use of the Committee's cash on hand, as well his use of all the remaining amounts owed by the former treasurer to the Committee. In addition, it permits the Committee to terminate now. We request that the attached draft be circulated as a tally vote matter.

Attachment

# DRAFT

1 ADVISORY OPINION 1996-28

2  
3 Richard W. Shaffer

4 740 Hamilton Mall

5 Allentown, PA 18101-2488

6  
7 Dear Mr. Shaffer:

8  
9 This responds to your letters dated May 2, June 20, and July 31, 1996, requesting  
10 an advisory opinion on behalf of the Lehigh Valley Citizens for Don Ritter ("the  
11 Committee") concerning the application of the Federal Election Campaign Act of 1971,  
12 as amended ("the Act"), and Commission regulations to the personal use of campaign  
13 funds, including funds owed to the campaign pursuant to a court judgment.

14 The Committee is the principal campaign committee of former Congressman Don  
15 Ritter of Pennsylvania. Mr. Ritter was elected to the House in 1978. In 1992, Mr. Ritter  
16 was defeated in his race for re-election. Since then, Mr. Ritter has not been a Federal  
17 candidate, and the Committee has proceeded to wind up its affairs. In its most recent  
18 reports filed with the Commission, covering activity up to June 30, 1996, the Committee  
19 has sought to terminate its political committee status. The Commission's Reports  
20 Analysis Division has notified the Committee that it could not terminate until it submitted  
21 a statement regarding the disposition of its residual funds.

22 The Committee presently has cash on hand totaling approximately \$26,400. In  
23 addition, the Committee is owed funds from Jerome Kindrachuk, the former treasurer,  
24 pursuant to a court judgment. In 1989, Mr. Kindrachuk was found guilty of stealing  
25 funds from the Committee. On July 12, 1989, the U.S. District Court ordered Mr.  
26 Kindrachuk to make restitution in the amount of \$40,000 to the Committee. None of this  
27 amount had been repaid as of November 30, 1989. According to reports filed by the  
28 Committee, Mr. Kindrachuk began to make restitution payments pursuant to this order in  
29 November 1994, and the Committee's 1996 Mid-Year report discloses that Mr.  
30 Kindrachuk still owes \$11,000. You state that "it remains uncertain as to whether or not  
31 he will make the balance of the payments."<sup>1</sup>

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<sup>1</sup> You enclose a copy of a repayment agreement signed by Mr. Kindrachuk on June 5, 1995, and witnessed by a probation officer in the U.S. District Court for the Eastern District of Pennsylvania. This

1           Section 439a of Title 2 and 11 CFR 113.2(d) provide that excess campaign funds  
2 may not be converted by any person to any personal use other than for certain specified  
3 purposes.<sup>2</sup> See 11 CFR 113.1(g) for the definition of “personal use.” However, pursuant  
4 to the Ethics Reform Act of 1989, Pub. L.101-194, and Commission regulations at 11  
5 CFR Part 113, a “qualified Member” of Congress who did not serve in the 103d Congress  
6 (covering the period from January 3, 1993, to January 3, 1995) or a later Congress may  
7 convert to personal use an amount equal to the unobligated balance of excess funds as of  
8 November 30, 1989 (hereinafter referred to only as “1989”). 11 CFR 113.2(e)(1) and (5).  
9 A “qualified Member,” also known as a “grandfathered member,” is defined as an  
10 individual who was serving as a Senator or Representative on January 8, 1980. 11 CFR  
11 113.1(f).

12           Mr. Ritter was serving in the House of Representatives on January 8, 1980, and  
13 did not serve in the 103d Congress or a subsequent Congress. He is therefore a qualified  
14 member who may convert excess campaign funds to personal use up to the amount  
15 allowed in 11 CFR Part 113. Mr. Ritter wishes to convert to his personal use the amount  
16 that the Committee presently has on hand, plus the amount still owed by Mr. Kindrachuk  
17 to the Committee. You maintain that this amount is substantially lower than the  
18 Committee’s 1989 unobligated balance. In addition, the Committee wishes to terminate  
19 its reporting obligation before all the payments are made by Mr. Kindrachuk and to  
20 assign to Mr. Ritter its rights to future payments.

21           Commission regulations specify how the unobligated balance is to be calculated.  
22 One of two methods may be used. Under the first method, the “cash assets” method, the  
23 amount is the authorized committee’s 1989 cash on hand, determined under 11 CFR  
24 104.3(a)(1), less the committee’s total outstanding debts as of that date. 11 CFR

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agreement refers to the 1989 restitution order and the fact that, as of the date of the agreement, Mr. Kindrachuk still owed money to the Committee. Pursuant to the agreement, Mr. Kindrachuk would “continue to make restitution payments directly to [the Committee],” and agreed that “a judgment be entered against him ... in the amount of \$24,000 in favor of [the Committee].” Mr. Kindrachuk further agreed that he would make monthly payments of at least \$1,000.

<sup>2</sup> Excess campaign funds are defined as “amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures. 11 CFR 113.1(e).

1 113.2(e)(1)(i).<sup>3</sup> The second method is the “cash plus nonliquid assets method” which  
2 provides for the conversion of unliquidated assets, or for adding the value of such assets  
3 and the amount of committee receivables to the cash assets amount determined under the  
4 “cash assets” method. 11 CFR 113.2(e)(1)(ii)(A), (B), and (C). The addition that is  
5 relevant to this request is the value of debts and loans reported as owed to the committee  
6 as of November 30, 1989, and itemized on the committee’s year end report for 1989,  
7 provided that such receivables are actually collected by the committee prior to its  
8 termination. 11 CFR 113.2(e)(1)(ii)(B).

9 Under either method, if the unobligated balance subsequently falls below the 1989  
10 level, the member may use lawful contributions, or other lawful committee income  
11 received after that date, to restore the account to that level. 11 CFR 113.2(e)(2). The  
12 member may also convert committee assets that were not held on November 30, 1989, to  
13 personal use but the fair market value of such assets at the time of conversion shall be  
14 counted against the unobligated balance. 11 CFR 113.2(e)(3). Under no circumstances  
15 may an amount greater than the unobligated 1989 balance be converted to personal use.  
16 11 CFR 113.2(e)(4).

17 According to information provided by you, the Committee’s 1989 cash assets  
18 totaled over \$72,000. You also state that the Committee’s outstanding debts on that date  
19 totaled no more than \$11,000.<sup>4</sup> Under the cash assets method, the Committee’s  
20 unobligated 1989 balance was at least \$61,000. This does not include the additional  
21 \$40,000 then owed by Mr. Kindrachuk that you propose to add on to the unobligated  
22 balance.<sup>5</sup>

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<sup>3</sup> Under 11 CFR 104.3(a)(1), cash on hand includes currency; balance on deposit in banks, saving and loan institutions, and other depository institutions; traveler’s checks owned by the committee; certificates of deposit, treasury bills and any other committee investments valued at cost.

<sup>4</sup> You state that this is the amount of disbursements made by the Committee between December 1 and December 30, 1989. The Commission also notes that the Committee’s 1989 year end report disclosed no other debts owed by the Committee.

<sup>5</sup> The regulation pertaining to the inclusion of the \$40,000 in the amount of such an obligation provides for the addition of those amounts that are itemized on the committee’s 1989 year end report. The Commission notes that the Committee did not begin to report this obligation as an amount owed to the Committee until an “amended” Termination Report covering the period from July 1 to August 31, 1995, was filed on August 31, 1995, almost four years after regulation’s effective date of November 6, 1991. Nevertheless, in view of the figures submitted, the Commission does not need to decide whether the



