



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 20, 1996

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996-28

Richard W. Shaffer
740 Hamilton Mall
Allentown, PA 18101-2488

Dear Mr. Shaffer:

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

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

The Committee presently has cash on hand totaling approximately \$26,400. In addition, the Committee is owed funds from Jerome Kindrachuk, the former treasurer, pursuant to a court judgment. In 1989, Mr. Kindrachuk was found guilty of stealing funds from the Committee. On July 12, 1989, the U.S. District Court ordered Mr. Kindrachuk to make restitution in the amount of \$40,000 to the Committee. None of this amount had been repaid as of November 30, 1989. According to reports filed by the Committee, Mr. Kindrachuk began to make restitution payments pursuant to this order in November 1994, and the Committee's 1996 Mid-Year report

discloses that Mr. Kindrachuk still owes \$11,000. You state that "it remains uncertain as to whether or not he will make the balance of the payments."¹

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

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

Commission regulations specify how the unobligated balance is to be calculated. One of two methods may be used. Under the first method, the "cash assets" method, the amount is the authorized committee's 1989 cash on hand, determined under 11 CFR 104.3(a)(1), less the committee's total outstanding debts as of that date. 11 CFR 113.2(e)(1)(i).³ The second method is the "cash plus nonliquid assets" method which provides for the conversion of unliquidated assets, or for adding the value of such assets and the amount of committee receivables to the cash assets amount determined under the "cash assets" method. 11 CFR 113.2(e)(1)(ii)(A), (B), and (C). The addition that is relevant to this request is the value of debts and loans reported as owed to the committee as of November 30, 1989, and itemized on the committee's year end report for 1989, provided that such receivables are actually collected by the committee prior to its termination. 11 CFR 113.2(e)(1)(ii)(B).

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

According to information provided by you, the Committee's 1989 cash assets totaled over \$72,000. You also state that the Committee's outstanding debts on that date totaled no more than \$11,000.⁴ Under the cash assets method, the Committee's unobligated 1989 balance was at least

\$61,000. This does not include the additional \$40,000 then owed by Mr. Kindrachuk that you propose to add on to the unobligated balance.⁵

The cash assets figure cited (\$61,000 or more) far exceeds the sum of the present cash on hand, plus the amount still owed by Mr. Kindrachuk (\$26,400 plus \$11,000 for a total of approximately \$37,400). Moreover, the payments by Mr. Kindrachuk are payments lawfully received by the Committee and may be used to restore some of the amount available for Mr. Ritter's personal use. 11 CFR 113.2(e)(2).⁶

The Committee's 1996 Mid-Year report discloses that the Committee has no outstanding debts owed by it. Moreover, it appears that the only reason for the Committee to remain in operation would be the receipt of Mr. Kindrachuk's payments. In view of these circumstances, the Commission concludes that the Committee may terminate its registration and will no longer need to file reports with the Commission. See 11 CFR 102.3. Additionally, in view of the analysis above, the Committee may assign to Mr. Ritter the rights to receive Mr. Kindrachuk's payments. The Committee should file a termination report with the Commission explaining that the funds expected to be paid on the debt still owed to the Committee by Mr. Kindrachuk will be paid instead to Mr. Ritter or his designee.

This response constitutes an advisory opinion concerning the 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
Chairman

1 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 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.

2 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).

3 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.

4 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.

5 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 Committee may add the \$40,000 amount to the 1989 balance by filing an amendment to the 1989 year end report.

6 The Commission notes your assertion that none of the Committee's disbursements since November 30, 1989, were used for Mr. Ritter's personal use. See 11 CFR 113.1(g). The Commission assumes that, if there were any Committee disbursements for the personal use of others, they would not alter the fact that the cash assets total exceeds the sum of the present cash on hand and the amount owed by Mr. Kindrachuk. See 11 CFR 113.2(d).