



FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

AUG 13 3 06 PM '96

AGENDA ITEM
For Meeting of: AUG 22 1996

August 13, 1996

MEMORANDUM TO: The Commission

THROUGH: John C. Surina *Chw for JCS*
Staff Director

FROM: Lawrence M. Noble *LN*
General Counsel

N. Bradley Litchfield *NBL*
Associate General Counsel

Jonathan M. Levin *JL*
Senior Attorney

SUBJECT: Draft AO 1996-33

Attached is a proposed draft of the subject advisory opinion which is subject to consideration under the expedited 20-day advisory opinion procedure. 2 U.S.C. §437f(a)(2); 11 CFR 112.4(b). The 20th day is August 19, 1996.

The draft opinion is being circulated for tally voting (48 hour) since the next Commission meeting is August 22. If the draft is not approved on tally vote circulation, it will be placed on the August 22 agenda. It has been listed as tentative on the sunshine notice for that meeting date.

Attachment

DRAFT

1 ADVISORY OPINION 1996-33

2
3 David R. Connell, Treasurer
4 Colantuono for Congress
5 P.O. Box 1084
6 Londonderry, NH 03053
7

8 Dear Mr. Connell:

9
10 This responds to your letters received on July 22 and 29, 1996, requesting an
11 advisory opinion on behalf of Colantuono for Congress ("the Colantuono Committee")
12 concerning the application of the Federal Election Campaign Act of 1971, as amended
13 ("the Act"), and Commission regulations to the use of state office campaign funds and the
14 receipt of contributions from state legislators.

15 Thomas P. Colantuono is a candidate in the September 10, 1996, primary for
16 nomination as the Republican House candidate in the First District of New Hampshire.
17 He is serving his last term in the New Hampshire State Senate. Mr. Colantuono's State
18 campaign committee contains surplus funds totaling approximately \$6,000. New
19 Hampshire State law prohibits the use of surplus campaign funds for personal purposes,
20 but allows their use for "fundraising activities or other politically related activity
21 sponsored by the candidate." New Hampshire Revised Statutes §664:4-b. Mr.
22 Colantuono wants to contribute these surplus funds to the reelection campaigns of fellow
23 members of the state legislature, in amounts "up to \$1,000 each to as few as six
24 candidates" at a point prior to the September 10 primary election.

25 Mr. Colantuono is soliciting contributions to his Federal campaign from political
26 activists, including the state legislators to whom he wishes to contribute surplus state
27 campaign funds. You state that the Colantuono Committee would receive contributions
28 from the state legislators themselves or, less likely, from their State campaign committees
29 "in amounts roughly equivalent to the contributions made by [Mr. Colantuono's State
30 committee] to the campaigns of the state legislators." Pursuant to the state proscription
31 on the personal use of surplus funds, you expect that the state legislators will not
32 reimburse themselves from their state campaign committees for any personal

1 contributions to the Colantuono Committee. You hope that the Colantuono Committee
2 will receive the contributions before the primary election.

3 You further describe the circumstances of these contributions as follows:

4 Typically state legislators contribute substantially to their own
5 campaigns. It is anticipated that [Mr. Colantuono] would point out to his
6 state legislative colleagues the advantage to their mutual political goals
7 that could be achieved by a contribution from the surplus state funds [of
8 Mr. Colantuono's State committee] to the state legislator's campaign,
9 which would allow the state legislator to contribute a like amount to the
10 Colantuono Committee without depriving the State legislator's own
11 campaign of much-needed funds. There would be no formal agreement,
12 but there would be an understanding that roughly equivalent contributions
13 would be made to one another's campaigns to promote their mutual
14 political goals.

15
16 Commission regulations prohibit the transfer of funds or assets from a candidate's
17 campaign committee for a nonfederal election to his or her principal campaign committee
18 or other authorized committee for a Federal election. 11 CFR 110.3(d). In addition, the
19 Act and Commission regulations prohibit the making and knowing acceptance of
20 contributions in the name of another, and also prohibit the use of one's name to effect
21 such a contribution. 2 U.S.C. §441f; 11 CFR 110.4(b). This includes the reimbursement
22 or other payment of funds by one person to another for the purpose of making a
23 contribution. See Advisory Opinion 1986-41.

24 From your description of the understanding between Mr. Colantuono and the state
25 legislators, it appears that donations from Mr. Colantuono's State committee would
26 replenish, in advance or afterward (and in whole or in part), contributions made from the
27 state legislators' committees to the Colantuono Committee. Such an arrangement would
28 thus amount to a transfer of funds from Mr. Colantuono's State campaign committee
29 through the state legislators' committees to the Colantuono Committee, and would be
30 impermissible under 11 CFR 110.3(d).

31 Contributions by the state legislators from their personal funds would, absent
32 certain circumstances, lead to a different conclusion. Such contributions would not have
33 originated with their committees, which would have received funds from Mr.
34 Colantuono's State committee. Moreover, in accordance with New Hampshire State law,

1 the legislators will presumably not be paid or reimbursed from their committees, either
2 before or after their personal contributions. Such contributions would be, instead, their
3 personal contributions to the Colantuono Committee.

4 However, the Commission notes your representation that, typically, state
5 legislators contribute substantially from their personal funds to their own campaigns. The
6 understanding described by you may entail a reimbursement of the state legislator that is
7 impermissible under 2 U.S.C. §441f. Specifically, if the state legislator does not make a
8 donation, or reduces his donation, to his own campaign after, or in contemplation of, the
9 receipt by his campaign of a donation from the Colantuono State committee, such
10 conduct would indicate that the Colantuono State committee's donation to the legislator's
11 campaign was replacing the amount he would normally give to his own campaign, and
12 instead was giving to the Colantuono Federal Committee.¹

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

16 Sincerely,

17
18
19 Lee Ann Elliott
20 Chairman
21

22
23 Enclosure (AO 1986-41)
24

¹ The Commission notes that an impermissible transfer, under 11 CFR 110.3(d), would also result from a state legislator's personal contribution to the Colantuono Committee if, for example, state legislator A loans funds to his committee, and the Colantuono State committee then donates funds to A's committee for the purposes of repaying A and enabling him to make a personal contribution to the Colantuono Committee.