



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 23, 1996

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996-33

David R. Connell, Treasurer
Colantuono for Congress
P.O. Box 1084
Londonderry, NH 03053

Dear Mr. Connell:

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

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

Mr. Colantuono is soliciting contributions to his Federal campaign from political activists, including the state legislators to whom he wishes to contribute surplus state campaign funds. You state that the Colantuono Committee would receive contributions from the state legislators themselves or, less likely, from their State campaign committees "in amounts roughly equivalent to the contributions made by [Mr. Colantuono's State committee] to the campaigns of the state legislators." Pursuant to the state proscription on the personal use of surplus funds, you expect

that the state legislators will not reimburse themselves from their state campaign committees for any personal contributions to the Colantuono Committee. You hope that the Colantuono Committee will receive the contributions before the primary election.

You further describe the circumstances of these contributions as follows:

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

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

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

Contributions by the state legislators from their personal funds would, absent certain circumstances, lead to a different conclusion. Such contributions would not have originated with their committees, which would have received funds from Mr. Colantuono's State committee. Moreover, in accordance with New Hampshire State law, the legislators will presumably not be paid or reimbursed from their committees, either before or after their personal contributions. Such contributions would be, instead, their personal contributions to the Colantuono Committee. However, the Commission notes your representation that, typically, state legislators contribute substantially from their personal funds to their own campaigns. The understanding described by you may entail a reimbursement of the state legislator that is impermissible under 2 U.S.C. 441f. Specifically, if the state legislator does not make a donation, or reduces his donation, to his own campaign after, or in contemplation of, the receipt by his campaign of a donation from the Colantuono State committee, such conduct would indicate that the Colantuono State committee's donation to the legislator's campaign was replacing the amount he would normally give to his own campaign, and instead was giving to the Colantuono Federal Committee.¹

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

Enclosure (AO 1986-41)

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.