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December 9, 1996

Federal Election Commission
Attn: N. Bradley Lichtfield, Esq.
Office of General Counsel
999 E Street, N.W.
Washington, DC 20463

AOR 1996-52

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
DEC 10 10 28 AM '96
Federal Express

Re: Robert E. Andrews for Congress Committee

Dear Mr. Lichtfield:

Robert E. Andrews for Congress, the political committee established to support the candidacy of Robert E. Andrews for the First Congressional District of New Jersey (the "Committee"), requests an Advisory Opinion to clarify the rules governing the use and refund of excess campaign funds (i.e. funds in excess of expenses incurred by the Committee in connection with the 1996 Congressional election) remaining in the Committee's 1996 congressional campaign accounts.

In September of 1996, the Committee established separate accounts for the receipt of contributions from individuals (the "Individual Account") and for the receipt of contributions from Political Action Committees (the "PAC Account"). The Committee intends to separately identify the contributors to both the Individual and PAC Accounts, whose contributions potentially constitute excess funds as defined by the Code (see 11 CFR 113.1((e)) on the basis of those contributions most recently received into both accounts. 11 CFR 104.12.

Guided by your office's November 13, 1996 information response and subject to the Commission's response to the following questions, the Committee intends to refund excess contributions to contributors while also soliciting contributions from those contributors for a state political committee established by Congressman Andrews in support of his candidacy for the Office of Governor of the State of New Jersey ("Andrews for Governor"). See AO 1994-16.

Specifically, the Committee seeks the Commission's guidance on the following issues:

First, with respect to future expenditures from either the Individual Account or the PAC Account, what is the source of those funds -- the oldest contributions or the most recently received contributions. 11 CFR 104.12 would indicate that any such expenditures should be considered to represent expenditures of the oldest contributions. Would the same rule apply to a permissible transfer of such excess funds to, for example, a state political committee? See 11 CFR 113.2(a)(ii)(c).

Second, may the Committee use the excess funds as follows: (i) select the contributors (whose contribution has been identified as not yet spent by the Committee) to whom it offers refunds (AO 1987-11) irrespective of whether the Committee chooses to offer refunds to more recent contributors; (2) offer partial refunds of excess funds; and (3) transfer any remaining excess funds (not selected for refund or otherwise not refunded) to an "Andrews for Congress in 1998" account for lawful and permissible use in the next federal election cycle. The rule set forth in 11 CFR 113.2 grants the Committee broad authority to utilize excess funds in any manner permitted therein. Accordingly, there would appear to be minimal federal concern in requiring the Committee to refund contributions in any particular order or sequence, provided only that all such refunds are offered only to the identified contributors of excess funds. However, since we can find no advisory opinion or law which expressly addresses the Committee's exercise of this discretion, we seek your guidance on this question.

Third, may the Committee identify the contributors of the excess funds by tracing the most recent contributors to each of the separate Individual and PAC Accounts, or must it identify those contributors irrespective of the maintenance of the separate accounts? For example, subject to the Commission's response to this inquiry, it is the Committee's intent to transfer the PAC Account contributions to an "Andrews for Congress in 1998" PAC account opened for the next federal election cycle. Would excess funds then be determined solely from the contributors who constitute the Andrews for Congress in 1996 Individual Account?

Finally, is the answer to any of the foregoing questions affected by the occurrence of other permissible transfers or uses of excess funds under 11 CFR 113.2? Your guidance on these questions is greatly appreciate. If you have any questions, please do not hesitate to call me at the above number.

Sincerely yours,



Ronald S. Ladell
Counsel to Robert E. Andrews
for Congress

RSL

cc: Honorable Robert E. Andrews