

KAY BAILEY HUTCHISON FOR SENATE COMMITTEE

P.O. BOX 9190
DALLAS, TEXAS 75209
(214) 351-0503
TELECOPIER (214) 351-0503

May 15, 1997

AOR 1997-06

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAY 21 12 45 PM '97

Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Advisory Opinion Request relating to 11 C.F.R. § 103.3 (1997)

Gentlemen/Mesdames:

On behalf of the Kay Bailey Hutchison for Senate Committee (the "Committee"), I am submitting this request for an advisory opinion from the Federal Election Commission (the "Commission") as provided by 11 C.F.R. § 112.1 (1997). The Committee seeks a clarification as to the requirements of Section 103.3 of the rules of the Commission insofar as such rule is applicable to certain investment practices of the Committee. Specifically, the Committee would like the Commission to confirm that Section 103.3(a) of the rules and regulations of the Commission does not require the Committee to transfer physically investment income received by the Committee into its Section 103.2 depository checking account before such investment proceeds are reinvested in the Committee's investment accounts. As will be discussed below, separate provisions within Section 103.3(a) can result in different conclusions. We could find no specific advisory opinion that directly addresses the question.

The Committee maintains a checking account with a national banking association as required by the Federal Election Campaign Act of 1971, as amended ("FECA"), and the rules and regulations of the Commission. 2 U.S.C. § 432(h)(1); 11 C.F.R. § 103.2 (1997). Other than certain investment income, which will be discussed below, all monies received by the Committee are deposited into this checking account, including without limitation, all contributions, rebates, refunds, reimbursements and other receipts from third parties, all in compliance with applicable law. 2 U.S.C. § 432(h)(1); 11 C.F.R. § 103.3(a) (1997). As mandated by federal law, all disbursements of the Committee are made out of this checking account. Committee funds not immediately needed for expenses are invested in money-market funds and United States government securities, as permitted by Section 103.3 of the rules of the Commission and certain of its advisory opinions. See 11 C.F.R. § 103.3(a); Advisory Opinion 1986-18, Fed. Election Camp. Fin. Guide (CCH) ¶5856 (June 19, 1986); Advisory Opinion 1980-39, Fed. Election Camp. Fin. Guide (CCH) ¶5490 (May 16, 1980). The investments are made through and held in investment accounts maintained with a securities investment firm. This investment income is received in the form of interest, dividends and gains on the sale or maturity of securities. In order to achieve the maximum return, investment income received is automatically and directly reinvested in money-market funds maintained in the investment

account. All income earned received from investment activity is fully disclosed on Line 15 (Other Receipts) of the Detailed Summary Page and itemized on an appropriate Schedule A in the Committee's FEC FORM 3 Report of Receipts and Disbursements covering the applicable period.

A question has now arisen as to whether a technical reading of Section 103.3(a) requires that the investment income be placed into the Committee's checking account before being reinvested. Section 103(a) provides in part that "[a]ll receipts by a political committee shall be deposited in account(s) established pursuant to 11 CFR 103.2...." Section 103.2 refers to the requirement that a political committee must maintain one or more campaign depository with a federally insured financial institution. Section 103.3(a), however, also states that "[f]unds may be transferred from the depository for investment purposes, but shall be returned to the depository before such funds are used to make expenditures." 11 C.F.R. § 103(a) 1997. Implicit in the immediately preceding provision is the concept that the Committee does not need to return invested funds (and income earned on such investments) to its Section 103.2 checking account until the Committee needs to make an expenditure.

In Advisory Opinion 1980-39 the Commission approved the investment of political committee funds into a professionally managed money market fund. Advisory Opinion 1980-39, Fed. Election Camp. Fin. Guide (CCH) ¶5490 (May 16, 1980). Likewise in Advisory Opinion 1986-18, the Commission permitted a committee's funds to be invested in an interest bearing cash management account with a securities investment concern. Advisory Opinion 1986-18, Fed. Election Camp. Fin. Guide (CCH) ¶5856 (June 19, 1986). It should be noted that typically the types of investment accounts referred to in the advisory opinions accrue interest which is automatically credited into the investment fund (like interest is added to a savings account). The only relevant limitations noted by the Commission in its advisory opinions on these investment activities were the requirements that (1) all political committee expenditures be made only out of the section 103.3 depository, and (2) that all investment income earned be reported as a receipt on the committee's Report of Receipts and Disbursements. Without explicitly so stating, parts of Rule 103.3(a) and the Commission's advisory opinions referred to above seem to contemplate that political committee funds can be invested, reinvested and earn income in other investment accounts without the necessity of the income being placed physically in the Section 103.2 depository so long as (1) all of the committee's expenditures are made only out of the Section 103.2 depository and (2) all investment income is correctly reported on that political committee's Report of Receipts and Disbursements that covers the period in which the investment income is received. To read Section 103.3 as requiring investment income to be physically deposited directly into the section 103.2 depository would result in increased cost and complexity being imposed on political committees without any corresponding benefits to the Commission. Such an interpretation may also make the investment accounts approved of in the above-referenced advisory opinions unavailable or uneconomical. Such a reading is unnecessary and is not required by either FECA or the rules and regulations of the Commission.

Accordingly, the Committee requests that the Commission issue its advisory opinion that the

Federal Election Commission
May 15, 1997
Page 3

rules and regulations of the Commission do not require the Committee to transfer physically investment income received by the Committee into its Section 103.2 depository checking account before such investment proceeds are reinvested in the Committee's investment accounts.

The Committee appreciates the Commission's consideration of this matter. If the Commission or its staff have any additional questions or comments concerning this response, please contact the undersigned at (214) 351-0503.

Very truly yours,



Kenneth W. Anderson, Jr.
Treasurer
Kay Bailey Hutchison for Senate
Committee

KWA/ph

cc: Mr. Ben Brooks