



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

August 15, 1997

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1997-10

Patrick J. Alcox  
Attorney-at-Law  
75 Public Square, Suite 650  
Cleveland, Ohio 44113

Dear Mr. Alcox:

This responds to your letter dated June 14, 1997, on behalf of Hoke for Congress Committee ("the 1992 Committee") and Hoke for Congress 96 ("the 1996 Committee"), the principal campaign committees of former Representative Martin Hoke, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to various transactions by both committees in the 1996 election cycle.

Mr. Hoke won the 1996 Republican primary, but was not re-elected in the 1996 general election, and seeks advice on the proper procedure to follow regarding the termination of both committees. Your request presents specific actions that you propose in order to terminate the filing status of both committees. These relate to transfers of funds between the 1992 Committee and the 1996 Committee.

Mr. Hoke was the Republican candidate for Congress from the 10th Congressional District of Ohio in 1992. At that time he established the 1992 Committee and loaned the committee \$254,000 of his own funds. He was elected in 1992 and the 1992 Committee repaid him \$80,000 of the loan, leaving an outstanding and unpaid debt to Mr. Hoke of \$174,000.

You state that, during the 1996 election cycle, approximately 92 individuals, who had contributed the maximum lawful amount to the 1996 Committee, wished to contribute to the expenses still outstanding from the 1992 campaign. Each of them, you

explain, had also earlier contributed \$1,000 toward the 1992 election.<sup>1</sup> The total additional amount contributed by this group to the 1992 Committee was \$91,652. You further explain that the net outstanding debt of the 1992 Committee was solely the remaining unpaid balance (\$174,000) due to the candidate.<sup>2</sup> However, instead of using the \$91,652 to pay this debt to Mr. Hoke (who would then presumably lend the same amount to the 1996 campaign), the 1992 Committee directly transferred the \$91,652 to the 1996 Committee.

You have proposed a method to make corrective transfers that would allow both committees to terminate. You propose that Mr. Hoke would loan \$91,652 to the 1996 Committee which, in turn, would transfer that amount to the 1992 Committee. The 1992 Committee would then pay these funds to Mr. Hoke in order to retire \$91,652 of the net outstanding debt owed to him for the personal loan that he previously made to the 1992 Committee. You state that Mr. Hoke would then forgive the remaining \$82,347 debt that is owed to him by the 1992 Committee.

As your request states, under 11 CFR 116.2(c)(2), no transfers of funds may be made from a candidate's authorized committee to another authorized committee of the same candidate if the transferor committee has net debts outstanding at time of the transfer under the formula described in 11 CFR 110.1(b)(3)(ii).<sup>3</sup> Therefore, the Commission would agree with your admission that the described transfer was prohibited under the cited Commission regulations. However, the advisory opinion process contemplates only future proposed transactions, or activity that is already under way and may continue in the future. See 11 CFR 112.1(b). Therefore, this opinion does not make any findings or determinations as to whether the past transfers made by the 1992 Committee would represent violations of law under 2 U.S.C. §437g(a).

Under the Act and Commission regulations, the principal campaign committee of a candidate is required to file reports of its receipts and disbursements. 2 U.S.C. §434(a)(2). In general, a political committee may terminate its filing obligations and status only upon filing a valid termination report on the appropriate FEC form, or upon filing a written statement containing the same information. 11 CFR 102.3(a)(1), see 2 U.S.C. §433(d)(1). Only a committee which will no longer receive any contributions or make any disbursements that would otherwise qualify it as a political committee may terminate, provided that such committee has no outstanding debts and obligations. The committee shall submit a final report of receipts and disbursements that includes a statement as to the purpose for which any residual funds will be used,

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<sup>1</sup> For the same reasons noted below with reference to the proper use of the advisory opinion process, the Commission notes that this opinion does not reach any issues concerning any possible violations of the contribution limits of 2 U.S.C. §441a by those who made contributions to either committee or by the committees that accepted those contributions. See 2 U.S.C. §441a(f).

<sup>2</sup> The 1992 Committee's 1996 Year End Report substantiates your statement. The 1996 Committee's Year End Report (for 1996) shows that its only remaining obligation is a \$30,750 disputed liability for debt.

<sup>3</sup> In order to determine whether there are net debts outstanding from a particular election, the treasurer of the candidate's authorized political committee shall calculate the net debts outstanding as of the date of the election. 11 CFR 110.1(b)(3)(ii).

including a statement as to whether such residual funds will be used to defray expenses incurred in connection with an individual's duties as a holder of Federal office. *Id.*<sup>4</sup>

Under the Act and Commission regulations, a candidate for Congress may make unlimited expenditures from personal funds. This permits such candidates to make loans or contributions in unlimited amounts to their own campaigns. 11 CFR 110.10(a). See Advisory Opinions 1995-24 and 1991-9. Therefore, Mr. Hoke may forgive all or part of the loans of personal funds that he made to his 1992 Committee. As noted above, loans made by a candidate to the candidate's own campaign committee are subject to debt settlement, as are other debts owed by political committees. 11 CFR 116.7(b).<sup>5</sup>

In these circumstances, the Commission reiterates that the initial transfer of \$91,652 was prohibited by the regulations. This prohibition applies even though that same amount could have been lawfully donated to the 1996 Committee by Mr. Hoke from his personal funds, whether or not those personal funds were comprised of in any part repayments on loans he made (from personal funds) to the 1992 Committee. Given these circumstances, the Commission does not object to the corrective transfer to the 1992 Committee which you have presented. The Commission notes, however, that the debt settlement process must be followed before termination reports will be accepted from both committees. The Commission also notes that as part of the debt settlement process and prior to termination, the 1992 Committee and the 1996 Committee will be required to refund any 1992 contributions, which when aggregated with contributions received by the 1996 Committee, would exceed the limits of 2 U.S.C. §441a(a) and 11 CFR 110.1. The 1992 Committee will likewise be required to refund any other contributions it has accepted that are not consistent with 11 CFR 110.1(b)(3), which governs contributions designated for a particular election but made after that election.<sup>6</sup> These refunds must be made prior to any repayment of debt owed by the 1992 Committee to the candidate.

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<sup>4</sup> An authorized committee of a candidate shall include in its termination report a statement that no noncash committee assets will be converted to personal use. 11 CFR 102.3(a)(2). A principal campaign committee may not terminate until it has met the cited requirements and until all debts of any other authorized committee(s) of the candidate have been extinguished. 11 CFR 102.3(b) and 116.7(a). The terminating committee shall also file a debt settlement plan after the creditors included in the debt settlement plan have agreed to the settlement or forgiveness of the particular debt(s) owed to each of them. 2 U.S.C. § 433(d)(1). Section 116.7(b) of the regulation lists the types of debts subject to debt settlement. These include debts arising from loans made by political committees or individuals, including candidates. See 11 CFR 116.7(b)(4).

<sup>5</sup> Other than the unpaid loans owed to Mr. Hoke by the 1992 Committee, the only reported debt of either committee is a disputed debt with a commercial vendor of the 1996 Committee. Section 116.10(b) outlines procedures for dealing with disputed debt settlement situations. See Advisory Opinions 1995-7 and 1989-2.

<sup>6</sup> The Commission notes that contributions may only be accepted for a specific election, after the election has occurred, to the extent that there is a remaining net debt for that specific election. This provision would be applicable to any contributions made to the 1992 Committee to retire the 1992 general election debt.

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)

John Warren McGarry  
Chairman

Enclosures (AOs 1995-24, 1995-7, 1991-9 and 1989-2)