



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

March 6, 1998

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1997-28

W. Ben Bius  
P.O. Box 6153  
Huntsville, Texas 77342-6153

Dear Mr. Bius:

This refers to your December 11, 1997, letter which requests an advisory opinion regarding the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to your proposal to re-activate your campaign committee.

You were a candidate in the 1996 Republican primary to nominate a candidate to represent the 2nd Congressional District of Texas. Your principal campaign committee was the Ben Bius Committee ("the Committee"). The Committee filed its amended termination report on July 15, 1996. As part of the termination process, you forgave \$92,000 in campaign loans made from your personal funds to the Committee. However, subsequent to the termination and debt forgiveness, you discovered that you had received erroneous information from a third party Certified Public Accountant. You further elaborate that the CPA represented that the debt owed by the Committee to you, if forgiven, would be deductible against capital gains under the tax code. You apparently relied upon this erroneous advice.

Given these circumstances, you now wish to reinstate the Committee and "reverse" or revoke your forgiveness of the unpaid loans in order to engage in further fundraising to "repay" the reinstated debt. You ask whether this plan is permitted by the Act and Commission regulations.

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, 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>1</sup>

The Act further requires that the reports filed by a candidate's principal campaign committee disclose, among other transactions, all loans made by or guaranteed by the candidate, as well as contributions from the candidate. 2 U.S.C. §§434(b)(2)(B),(G) and 434(b)(8). See also 11 CFR 104.3(a)(4)(iv) and 104.3(d). Debts and obligations owed by (or to) a political committee which remain outstanding shall be continuously reported until extinguished. 11 CFR 104.11.

In past opinions, the Commission has concluded that, in general, once a political committee has properly wound up its activities and filed a valid termination report, its existence comes to an end. See Advisory Opinions 1977-58 and 1977-43; compare with Advisory Opinion 1980-114. In Advisory Opinion 1977-43, the Commission refused to permit a candidate to reactivate a terminated principal campaign committee in order to accept or raise contributions to pay for previously forgiven candidate debt.<sup>2</sup> However, in Advisory Opinion 1980-114, the candidate was permitted to receive the proceeds of an unexpected media refund where he had already terminated his committee and forgiven the debt owed to him by the committee. The Commission notes that your situation is distinguishable from the earlier opinions, since you are dealing with a unique mistake stemming from the erroneous advice which you received regarding the tax consequences of forgiving the debt owed to you by the Committee. Therefore, the Commission concludes that you may reinstate the committee, revoke your prior forgiveness of the \$92,000 in loans made by you to the Committee and now engage in new fundraising to retire the revived debt owed to you by the Committee. Any contributions raised will be

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<sup>1</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>2</sup> Of course the situation has been treated differently if a committee has not yet terminated. The Commission has permitted the candidate to recover personal funds the candidate donated to the committee to make refunds to other contributors which were themselves subsequently refused by those contributors (Advisory Opinion 1980-147), and to accept media refunds prior to termination where a committee owes the candidate an unforgiven debt (Advisory Opinion 1979-5).

subject to the limits and prohibitions of the Act and Commission regulations. See 2 U.S.C. §§439a, 441a, 441b, 441c, 441e and 441f.<sup>3</sup>

The Commission notes several circumstances and conditions central to its conclusion above. First, the Committee continuously regarded and reported the prior loans from you as debt, and you are not seeking to retroactively change the characterization of the underlying loan transaction. See and compare Advisory Opinions 1997-21 and 1977-58.

Finally, because the erroneous tax advice permits you to revoke the prior termination of the Committee, it is now required to file reports covering the entire period from last report filed through December 31, 1997. These back reports should be submitted in two separate filings. One filing should cover all of calendar year 1996, except for the period covered by the Committee's pre-primary election report. The other filing should cover all of calendar year 1997. Both of these reports need to be filed within 30 days of the receipt of this opinion. In addition, the Committee must file reports of its 1998 (and later) activity according to the semi-annual reporting schedule prescribed by the Act. 2 U.S.C. §434(a)(2)(B).

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)

Joan D. Aikens  
Chairman

Enclosures (AOs 1997-21, 1980-147, 1980-114, 1979-5, 1977-58 and 1977-43)

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<sup>3</sup> In particular, the Commission reminds you that any person or committee who already had previously given to your 1996 primary campaign the maximum amount permitted by 2 U.S.C. §441a(a) may not make any additional contributions to the Committee. See 11 CFR 110.2(g).