



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

October 13, 2000

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2000-25

Alan W. Weinblatt  
Weinblatt & Gaylord  
1616 Pioneer Building  
336 North Robert Street  
St. Paul, MN 55101

Dear Mr. Weinblatt:

This responds to your letter of September 7, 2000, requesting an advisory opinion on behalf of the Minnesota House of Representatives Democratic Farmer-Labor Caucus ("House DFL Caucus" or "Caucus") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations, to a proposed transfer of funds from the Caucus' existing nonfederal account to a newly created Federal political committee.

Your request states that the House DFL Caucus has historically been involved only in nonfederal election activity, specifically, assisting DFL candidates in their campaigns for election or re-election to the Minnesota House of Representatives. Toward that end, the Caucus has raised and spent significant funds in various coordinated nonfederal activities. To date, it has done so through a nonfederal account, *i.e.*, an account that is not registered with the Commission as a Federal political committee.

However, the Caucus has determined that the future success of Minnesota House DFL candidates depends, in part, on the success of DFL candidates for the United States House of Representatives. Consequently, the Caucus would like to provide assistance to these candidates. You indicate that the Caucus has created a separate Federal account for this purpose, and has taken the initial steps toward registering that account as a Federal political committee.

The Caucus would like to fund the Federal account by transferring a significant portion of the balance in its nonfederal account to the Federal committee. You state that the Caucus proposes to transfer:

all contributions that [the Caucus] has received from individuals who are United States citizens, or persons who are lawfully admitted to permanent residence in the United States, and whose contributions in the aggregate total of one hundred dollars (\$100) or less.

The moneys that the Caucus proposes to transfer would not include any corporate or labor organization funds, or funds from any other source that is impermissible under the Act. The total amount of the transfer would exceed \$5000.

Your request also states that, in raising its funds, the nonfederal account has maintained records of the name and address of each person that donated \$100 or less to the nonfederal account. The Caucus is prepared to send written requests to these persons for redesignations of their donations to the newly created Federal account. These requests would explain that, if the donor consents in writing to the redesignation, the transferred funds would be used in connection with Federal elections, and that contributions used for this purpose are subject to the prohibitions and limitations of the Act. The advisory opinion request includes a copy of this proposed communication.

You ask whether the transfer of funds from the nonfederal account to the Federal account described in your request would be permissible under the Act.

The request indicates that the Caucus is making the transition from being an organization involved exclusively in nonfederal election-related activity to being an organization involved in both nonfederal and Federal election-related activity. Section 102.5(a)(1) of the Commission's regulations governs organizations that intend to finance political activity in connection with both Federal and nonfederal elections. Generally, section 102.5(a)(1) only allows transfers of nonfederal funds into a Federal account in accordance with the procedures for payment of allocated expenses set out in 11 CFR 106.5(g) and 106.6(e).<sup>1</sup>

However, section 102.6(a) states that transfers of funds may be made without limit on amount between affiliated committees whether or not they are political committees under 11 CFR 100.5, so long as these transfers are made only from funds which are permissible under the Act. Section 100.5(g)(2) states that "[a]ll committees . . . established, financed,

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<sup>1</sup> Section 102.5(a)(1)(i) states that no transfers may be made to a Federal account established under that section from any nonfederal account, except as provided in 11 CFR 106.5(g) and 106.6(e). Sections 106.5 and 106.6 require organizations that finance activity in connection with both Federal and nonfederal elections to allocate the expenses incurred in four types of activities between their Federal and nonfederal accounts. Sections 106.5(g) and 106.6(e) describe the procedures to be used for paying these allocated expenses. One of the two procedures requires a committee to pay the full amount of the allocated expense from its Federal account, and transfer funds from its nonfederal account to its Federal account to reimburse the Federal account for the nonfederal portion of the allocable expense.

maintained or controlled by the same corporation, labor organization, person or group of persons . . . are affiliated.” The two committees described in the request are both controlled by the House DFL Caucus. Thus, these two committees are affiliated committees under the Act, and can make unlimited transfers so long as the funds transferred are permissible under the Act.<sup>2</sup>

Your request describes the funds that have been designated for transfer to the Caucus’ Federal committee. The funds are donations received from individuals who are United States citizens (or persons lawfully admitted for permanent U.S. residence) and whose donations in the aggregate total \$100 or less. These funds would be permissible contributions under the Act, and thus can be transferred to the Federal committee.

However, in order to ensure that the funds transferred are, in fact, the funds designated in its request, the Caucus should review the cash on hand in its nonfederal account using a “first in-first out” analysis (“FIFO”). Under the FIFO analysis, the cash on hand in the nonfederal account is presumed to be composed of those contributions most recently received into the account. 11 CFR 104.12. The Caucus must be able to demonstrate that the cash on hand contains a sufficient amount of the permissible funds described above to cover the amount transferred to the Federal committee.<sup>3</sup>

In addition, prior to transferring funds from its nonfederal account, the Caucus must ensure that those funds may permissibly be deposited in the Federal account under section 102.5(a)(2). Section 102.5(a)(2) states that only contributions that have been designated for the Federal account, or that result from a solicitation which expressly states that the contribution will be used in connection with a Federal election, or that are from contributors who have been informed that all contributions are subject to the prohibitions and limitations of the Act, may be deposited in the Federal account established under 11 CFR 102.5(a)(1). You indicate that the Caucus intends to send written requests seeking written redesignations from the original donors, informing them that, if they agree to redesignate, the funds so transferred would be used in connection with Federal elections and would be subject to the prohibitions and limitations of the Act. This communication, along with the receipt of donor redesignations, would ensure that the transferred funds could permissibly be deposited in a Federal account under section 102.5(a)(2) of the regulations.

Under these circumstances, the Commission concludes that the transfer described in your request would be permissible. The Caucus must, however, take additional steps to ensure full compliance with the reporting requirements of the Act.

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<sup>2</sup> This result is also consistent with past advisory opinions that have similarly allowed transfers of funds from nonfederal accounts to Federal accounts when the funds being transferred were permissible under the Act, and when the committees involved provided the original donors appropriate notice and an opportunity to object to the transfer. *See* Advisory Opinions 1990-29, 1990-16, 1984-31 and 1981-34.

<sup>3</sup> The FIFO analysis shall be applied in a manner that identifies the pool of funds from which the transfer of individual contributions may be made. The Caucus may then use its donor consent process to select donors from within that pool whose donations to the nonfederal account may be included in the transfer to the Federal committee.

You indicate that the Caucus intends to transfer more than \$5000 to the newly created Federal committee, and would be making the transfer in order to assist Federal candidates. Under the Act, any gift, payment, distribution, advance, or deposit of money or anything of value “for the purpose of influencing any election for Federal office” is an “expenditure.” 2 U.S.C. §§431(9)(A)(i), 11 CFR 100.8(a)(1). Section 102.6(a)(2) states that organizations or committees making transfers under 11 CFR 102.6(a)(1) shall count these transfers against the reporting thresholds of the Act for determining whether an organization or committee is a political committee under 11 CFR 100.5. An organization that makes expenditures in excess of \$1,000 during a calendar year is a political committee. 2 U.S.C. §431(4), 11 CFR 100.5(a). Thus, by making these transfers, the Caucus’ nonfederal account would become a Federal political committee.

A nonfederal account that becomes a Federal political committee must register and report as such with the Commission. In its report, the committee must disclose the source of the funds in its cash on hand at the time it becomes a committee. 11 CFR 104.12. As explained above, the source of the funds in the committee’s cash on hand is determined using a FIFO analysis.<sup>4</sup> Thus, the balance is presumed to be composed of the funds most recently received by the committee. The committee’s report must itemize the funds in its cash on hand to the extent required by the Act and Commission regulations. See 2 U.S.C. §434(b), 11 CFR 104.3(a).

In most instances, a nonfederal account that becomes Federal political committee is also required to exclude, *i.e.* remove from its cash on hand, any funds that are not permissible under the Act. 11 CFR 104.12. However, this requirement does not apply to a nonfederal account that makes a one-time transfer of permissible funds to an affiliated Federal political committee, so long as the nonfederal account registers as a Federal political committee, transfers the funds, and then promptly files a termination report to end its Federal committee status. *See, e.g.,* Advisory Opinion 1987-12.<sup>5</sup> Therefore, if the nonfederal account transfers more than \$5000 to the Federal political committee, the nonfederal account must register with the Commission as a Federal political committee. In addition, the nonfederal account must review the balance of its cash on hand at the time of registration using the FIFO analysis described above.

If the nonfederal account intends to continue operating as a Federal political committee, it must remove any impermissible funds from its cash on hand at the time of registration. Alternatively, if the nonfederal account will make only a one-time transfer and will then be used exclusively for nonfederal election activity, the nonfederal account must register as a Federal political committee, but need not remove the impermissible funds from

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<sup>4</sup> See the discussion in footnote 3.

<sup>5</sup> The Commission’s conclusion in Advisory Opinion 1987-12 regarding the transferability of funds from a candidate’s campaign committee for a nonfederal election to an authorized committee of the same candidate for a Federal election has been superseded by Commission regulations at 11 CFR 110.3(d) which is not applicable in the situation presented here. However, the opinion’s guidance relating to submission of a registration statement coupled with the committee’s termination report is consistent with the discussion elsewhere in this opinion.

its cash on hand. Instead, when the nonfederal account submits its first disclosure report to the Commission, it must exclude all nonfederal funds from the amount reported in its cash on hand at the time of registration. In addition, the committee's first report must also be a termination report. *See* 11 CFR 102.3.

The Commission expresses no opinion as to any issues that may arise with respect to the possible application of Minnesota law to the activity described herein; nor as to the possible application of 2 U.S.C. §453 and 11 CFR 108.7, if State law issues are present.

This response constitutes an advisory opinion concerning 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)

Darryl R. Wold  
Chairman

Enclosures (AOs 1990-29, 1990-16, 1987-12, 1984-31 and 1981-34)