FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 1, 2002

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2002-08

William J. Vanderbrook, Treasurer
David Vitter for Congress
202 East Livingston Place
Metairie, LA 70005

Dear Mr. Vanderbrook:

This refers to your letters dated June 24, and June 6, 2002 concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed "transfer" of funds to the David Vitter for Congress Committee ("Federal Committee") from a State committee controlled by Congressman David Vitter.[1]

You state that you are the treasurer for the David Vitter for Congress Committee, Congressman Vitter's principal campaign committee. In March 2002, a State exploratory committee was formed and $500 was deposited to this committee's account from the Federal Committee. You further state that in April 2002, another $700,000 was also transferred to this committee from the Federal Committee.[2] You explain that this money was "established as a separate account and was not commingled with any contributions made directly to the State exploratory committee under State law limits and guidelines." You state that as of May 31, 2002, Congressman Vitter had decided not to seek State office in Louisiana and the $700,500 is still in a separate account.

You propose to "transfer" all of the $700,500 directly back to the Federal

[1] Since 1999, Congressman Vitter has represented the 1st Congressional District in Louisiana.
[2] The Federal Committee reported a $500 transfer on its April Quarterly Report and a $700,000 transfer on its 2002 July Quarterly Report.

Committee, dollar for dollar. You state that all of this money was raised under Federal election law guidelines and has not been commingled with money raised under State law; nor has any of it been spent. You also affirm that neither a loan nor line of credit was established by the State exploratory committee. Therefore, the funds in the separate account were not used as security or collateral for any loan or line of credit related to the Committee.

ACT AND COMMISSION REGULATIONS

While the Act does not specifically address the transfers from non-Federal accounts to Federal accounts of candidates' principal campaign committees, under 11 CFR 110.3(d), the transfer of funds or assets from a candidate's campaign committee or account for a non-Federal election to his or her principal campaign committee or other authorized committee for a Federal campaign are prohibited. However, at the option of the non-Federal committee, the non-Federal committee may refund contributions, and may coordinate arrangements with the candidate's principal campaign committee or other authorized committee for a solicitation by such committee(s) to the contributors.

APPLICATION TO PROPOSAL

After reviewing the unique facts presented here, the Commission concludes that this is not the type of situation to which the regulations 11 CFR 110.3(d) were intended to apply. It is evident from the Explanation and Justification for "Transfer of Funds From State to Federal Campaigns," that this regulation was intended to prohibit the transfer to a Federal committee of funds raised with respect to a State election in accordance with State laws. This regulatory scheme was adopted because, as noted in the Explanation and Justification, "[m]any [S]tates allow individuals to make contributions to [S]tate candidates that would exceed FECA limits…[and] allow corporations and labor organizations to make contributions to [S]tate candidates." 58 *Fed.Reg*. 3474 (January 8, 1993). This Explanation and Justification further states that "[The Commission] is also concerned about the indirect use of impermissible funds in [F]ederal elections…consequently, the Commission has decided to promulgate new rules that would more effectively prevent the indirect use of impermissible funds in [F]ederal elections." *Id*. at 3475.

In contrast to the concerns identified in the Explanation and Justification, the funds in question here were raised in their entirety by a Federal committee under the limits and prohibitions of the Act. In addition, the funds were placed in a segregated bank account by the State committee and were never commingled with non-Federal funds. Moreover, the State committee's segregated bank account, which has been open for only a few months, was never used for the State campaign. Indeed, the funds remain intact to this day. In sum, the concerns that were articulated in the Explanation and Justification in regard to transfers from State to Federal committees are wholly absent in this situation.

Viewing these factors together, the Commission concludes that because the $700,500 effectively remained Federal funds at all relevant times, they may be re-deposited into the Federal committee's account without violating 11 CFR 110.3(d). This re-deposit should be reported on the next report filed by the Federal Committee. The re-deposit should be made within 10 days of your receipt of this opinion. *Cf.* 11 CFR 103.3(a).[3] The Federal Committee should also include a memo entry in the report, consistent with the conclusions of this opinion, explaining the circumstances of the re-deposit.

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)

David M. Mason
Chairman

[3] Under 11 CFR 103.3(a), all receipts by a political committee shall be deposited in the political committee's account within 10 days of the treasurer's receipt of the funds.