

American Patriot Foundation, Inc.

404 "D" STREET, N.E.
WASHINGTON, D.C. 20002

U.S. SENATOR BOB SMITH, N.H., RET'D,
PRESIDENT

May 16 2003

Federal Election Commission
999 "E" Street, N.W.
Washington, D.C. 20463

AOR 2003-18

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2003 MAY 29 P 2:52

Gentlemen:

The purpose of this letter is to request an Advisory Opinion concerning application of the Federal Election Campaign Act of 1971, as amended, and Commission regulations, relating to the contribution of unexpended general election campaign funds to help establish a public charitable foundation called the American Patriot Foundation, which I have recently founded.

I was a candidate last cycle for re-election to the United States Senate from New Hampshire. I was defeated in the primary election. I received funds during the campaign for both the primary and the general election campaigns. When I was defeated, I wrote all the general election contributors and asked what their desires were concerning their donations. I specifically offered each and every contributor, in writing, an opportunity to request a refund. I then sent refund checks to each and every person or PAC who made that request. Subsequently, I also sent refund checks to every single contributor (both individuals and PACs) who failed to make any response. More than 150 days have elapsed since I wrote those letters. Some \$60,000 (roughly) in these refund checks remain uncashed at this time. Each bore the restriction that the check had to be cashed within 90 days of issuance. Accordingly, I propose to donate the entire remaining cash on hand to help establish a public charitable foundation, and ask for your formal advisory opinion as to whether such a donation would violate the Act or any regulation.

I direct your attention to your prior Advisory Opinion #1997-1, which I submit is in fact dispositive in this matter. In that instance, the former federal candidate (Congressman Bevill) did not say he had offered his contributors a refund. The only distinguishing factor is that Congressman Bevill was defeated in the general, not the primary election. Neither I nor any of my family members will be compensated for services by the American Patriot Foundation, which will also solicit donations from the general public, so as to qualify for treatment by the I.R.S. as a "public", rather than as a "private" charitable entity. At some point the Foundation may employ one or more of my former official staff members, but not under any circumstances be until all funds donated by my general election campaign have been expended for any lawful purpose within its governing articles. Two months ago the American Patriot Foundation incorporated in the District of Columbia as a non-profit corporation, and filed with the IRS for recognition as a charitable entity under section 501 c 3 of the Internal Revenue Code. A copy of

the Articles of Incorporation, and a copy of IRS Form 1023 is enclosed for your convenient reference, and is incorporated herein as if set forth in full at this point. Naturally, if the I.R.S. ultimately fails to accord the American Patriot Foundation recognition under 501 c 3, then any contribution made to it from my general campaign funds would be donated to some other charity that is described in 26 U.S.C. 170 c. I have already donated all leftover funds from my primary election account to the American Patriot Foundation, which is now soliciting donations from the general public.

I respectfully request ask that you conclude that the Act and Commission regulations would permit my general election committee to donate its remaining cash balance to help create the American Patriot Foundation.

Thank you for your attention to this request.

Sincerely,

A handwritten signature in black ink that reads "Bob Smith". The signature is written in a cursive style with a long horizontal flourish at the end.

BOB SMITH

United States Senator, 1991-2003