



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**ADVISORY OPINION 2004-03
CONCURRING STATEMENT**

**VICE CHAIR ELLEN L. WEINTRAUB
COMMISSIONER DAVID M. MASON
COMMISSIONER DANNY L. McDONALD**

Representative Cal Dooley, who is retiring from Congress, asked whether he could convert his leftover campaign funds to a multi-candidate committee. Such a practice has been followed by many of his predecessors. Prior to the enactment of BCRA, a candidate's campaign funds could be used for any lawful purpose that did not constitute personal use. *See* 2 U.S.C. § 439a (2000).

Specifically, pre-BCRA, the law recognized five appropriate uses of campaign funds, i.e.:

- (1) expenditures;
- (2) ordinary and necessary expenses incurred in connection with a Federal officeholder's duties;
- (3) contributions to a charity, that is, any organization described in section 170(c) of title 26; and
- (4) any other lawful purpose, including
- (5) transfers without limitation to any national, State, or local committee of any political party.

During the enactment of BCRA, the catch-all category, "any lawful purpose," was deleted from the law. Without it, there is no statutory basis on which the Commission can allow such previously unexceptional practices as converting leftover campaign funds to a multi-candidate committee or using such funds to run for state office (where permitted by state law). There is no legislative history associated with the deletion of "any lawful purpose," no known history of abuses of that provision, and inquiries directed to the drafters of the law have revealed no explanation for why or how it came to be deleted. It may have been a drafting error.

We write separately to emphasize that we are aware of no policy reason for denying Representative Dooley's request, but the law does not permit us to approve it. If retiring Members wish to be able to convert their remaining campaign fund to multicandidate committees or state campaign committees, or simply to retain discretion as to how they may lawfully dispose of such funds, section 439a will have to be amended by restoring the phrase "or any lawful purpose." Until it is, our hands are tied.

Ellen L. Weintraub
Ellen L. Weintraub
Vice Chair

4/20/04
Date

David M. Mason
David M. Mason
Commissioner

4/21/04
Date

Danny L. McDonald
Danny L. McDonald
Commissioner

4/20/04
Date