



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 9, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2006-38

Marc E. Elias, Esq.
Caroline P. Goodson, Esq.
Perkins Coie LLP
607 Fourteenth St., N.W.
Washington, DC 20005

Dear Mr. Elias and Ms. Goodson:

We are responding to your advisory opinion request on behalf of Senator Robert P. Casey, Jr. and his State campaign committee (the "State Committee") concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the use of funds remaining in the State Committee's campaign account. The Commission concludes that the State Committee must use a reasonable accounting method to identify the portion of its surplus that consists of federally permissible funds. Once it does so, the State Committee may donate its federally permissible funds to State and local candidates or State and local Democratic party organizations. It may also use those funds for travel expenses solely in connection with State and local campaign events.

Background

The facts presented in this advisory opinion are based on your letter received on December 12, 2006.

Senator Casey was elected on November 7, 2006 to represent the Commonwealth of Pennsylvania in the United States Senate. Before then, Senator Casey was the State Treasurer of Pennsylvania. He was elected to that position in November of 2004 and became a candidate for the United States Senate on March 11, 2005. Senator Casey filed a Statement of Candidacy for re-election in 2012 on December 21, 2006.

The State Committee was established by Senator Casey when he was a candidate for State Treasurer in the 2004 State-wide election. The State Committee has surplus funds in its non-Federal campaign account that it wishes to disburse to State and local candidates in Pennsylvania and for other related purposes, as described more fully below.

While the State Committee's surplus funds are from sources and in amounts permitted under Pennsylvania law, some of those funds are from sources that are prohibited by the Act's source restrictions, and some of those funds were received in amounts in excess of the Act's amount limitations. *See* 2 U.S.C. 441a, 441b, 441c, 441e, and 441f. The State Committee intends to use a reasonable accounting method to identify the portion of its surplus that consists of donations of federally permissible funds.¹ Once it has identified its federally permissible funds, the State Committee intends to use those funds for any or all of the following purposes, as permitted by Pennsylvania law. The State Committee may donate the funds to State or local candidates or to the nonfederal account of a State or local Democratic party organization. It may also use the funds to pay for travel by Senator Casey or one of his agents solely in connection with campaign events for State or local candidates or for other events that are solely in connection with State or local elections. None of the State Committee's funds will be used in connection with any Federal election, including Senator Casey's 2012 re-election.

The portion of the State Committee's remaining balance that consists of non-federally permissible funds will also be disbursed in accordance with Pennsylvania law, but will not be used in connection with any Federal or non-Federal election.

Questions Presented

1. *May the State Committee use a reasonable accounting method to identify federally permissible funds in its 2004 campaign account?*
2. *May the State Committee use its federally permissible funds to make donations to State and local candidates and the nonfederal accounts of State and local Democratic party organizations, in accordance with State law?*
3. *May the State Committee use its federally permissible funds to pay for travel by Senator Casey or one of his agents that is undertaken solely in connection with campaign events for State or local candidates or for other*

¹ Federally permissible funds are funds that do not exceed the amounts permitted with respect to contributions to Federal candidates under 2 U.S.C. 441a(a)(1), (2), and (3), and are not from sources prohibited by the Act from making contributions in connection with an election for Federal office. 2 U.S.C. 441i(e)(1)(B); 11 CFR 300.62; *see also* 2 U.S.C. 441a, 441b, 441c, 441e, and 441f. As currently adjusted for inflation, the Act limits contributions from individuals and non-multicandidate political committees to Federal candidates to \$2,300. The amount limitation on contributions from multicandidate Federal political committees to Federal candidates is \$5,000. *See* 2 U.S.C. 441a(a)(1)(A) and (2)(A).

events that are solely in connection with State or local elections, as permitted by State law?

Legal Analysis and Conclusions

Question 1: May the State Committee use a reasonable accounting method to identify federally permissible funds in its 2004 campaign account?

The State Committee must use a reasonable accounting method to identify federally permissible funds in its 2004 campaign account.

In two recent advisory opinions, the Commission has identified certain accounting methods as reasonable. In Advisory Opinion 2006-6 (Busby), the Commission identified the method described in 11 CFR 110.3(c)(4), which is known as the “first in, first out” method, as a reasonable accounting method. In Advisory Opinion 2004-45 (Salazar), the Commission determined that the “last in, first out” accounting method was reasonable.

Question 2: May the State Committee use its federally permissible funds to make donations to State and local candidates and the nonfederal accounts of State and local Democratic party organizations, in accordance with State law?

Yes, the State Committee may use its federally permissible funds to make donations to State and local candidates and the nonfederal accounts of State and local Democratic party organizations, in accordance with State law.

As amended by the Bipartisan Campaign Reform Act of 2002 (“BCRA”),² the Act regulates certain actions of Federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, Federal candidates or officeholders, when they raise or spend funds in connection with either Federal or non-Federal elections. 2 U.S.C. 441i(e); 11 CFR 300.60 through 300.65. In pertinent part, BCRA, and the Commission regulations implementing BCRA, prohibit those subject to section 441i(e) from soliciting, receiving, directing, transferring, spending, or disbursing funds in connection with any non-Federal election unless the funds do not exceed the amounts permitted with respect to contributions to Federal candidates under 2 U.S.C. 441a(a)(1), (2), and (3), and are not from sources prohibited by the Act from making contributions in connection with an election for Federal office. 2 U.S.C. 441i(e)(1)(B); 11 CFR 300.62; *see also* 2 U.S.C. 441a, 441b, 441c, 441e, and 441f. Commission regulations also require the soliciting, receiving, directing, transferring, spending, or disbursing of such funds to be consistent with State law. 11 CFR 300.62.

² Pub. L. No. 107-155, 116 Stat. 81 (Mar. 27, 2002).

Senator Casey is a Federal officeholder and candidate, and the State Committee is an entity directly established, financed, maintained, or controlled by him. Donating to a State or local candidate or to the non-Federal account of any State or local Democratic party organization would involve transferring, spending, or disbursing funds in connection with a non-Federal election. Therefore, any funds that are transferred, spent, or disbursed must be federally permissible – they must not have been received by the State Committee in amounts in excess of those permitted with respect to contributions to Federal candidates and must not be from prohibited sources. *See* 2 U.S.C. 441i(e)(1)(B) and 11 CFR 300.62; *see also* Advisory Opinion 2005-5 (LaHood). The Act and Commission regulations permit the State Committee to use the accounting method described in Question 1 to determine which funds already raised by the State Committee are federally permissible. Once that is determined, the Committee may donate any amount of such funds to State and local candidates or to the non-Federal accounts of State and local Democratic party organizations without further restriction under 2 U.S.C. 441i(e)(1)(B) and 11 CFR 300.62, provided that such donations are consistent with Pennsylvania law. Thus, because the Commonwealth of Pennsylvania allows unlimited donations from one State candidate committee to another, the State Committee may donate any amount of federally permissible funds remaining in its 2004 campaign account to State candidates.

Question 3: May the State Committee use its federally permissible funds to pay for travel by Senator Casey or one of his agents that is undertaken solely in connection with campaign events for State or local candidates or for other events that are solely in connection with State or local elections, as permitted by State law?

Yes, the State Committee may use its federally permissible funds to pay for travel by Senator Casey or one of his agents that is undertaken solely in connection with campaign events for State or local candidates or for other events that are solely in connection with State or local elections, as permitted by State law.

As explained above in the answer to Question 2, the State Committee may only use federally permissible funds in connection with non-Federal elections. *See* 2 U.S.C. 441i(e)(1)(B) and 11 CFR 300.62. In addition, such use of funds must comply with applicable State law. *See* 11 CFR 300.62. You have represented that the State Committee would use federally permissible funds to pay for any travel expenses incurred by Senator Casey or any of his agents solely in connection with campaign events or other events on behalf of State and local candidates and that, in doing so, the State Committee would comply with Pennsylvania law. You have also represented that none of the State Committee's funds will be used in connection with any Federal election. Accordingly, the State Committee may use the federally permissible funds remaining in its 2004 campaign account for the travel expenses you describe.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. All cited advisory opinions are available on the Commission's web site at www.fec.gov. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

Robert D. Lenhard
Chairman