

ADR 2009-12 - Comment



"Robert E. Rutkowski"
<rutkowski@ [REDACTED]>
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To <CommissionerWalther@fec.gov>

cc

bcc

Subject COLEMAN'S REQUEST TO USE RECOUNT FUNDS FOR
LEGAL EXPENSES

History:  This message has been forwarded.

Steven T. Walther
Chairman
Federal Election Commission
999 E Street, NW
Washington, DC 20463
(800) 424-9530
E-mail: CommissionerWalther@fec.gov

Re: COLEMAN'S REQUEST TO USE RECOUNT FUNDS FOR LEGAL EXPENSES

Dear Chairman:

Today, Citizens for Responsibility and Ethics in Washington (CREW) filed a letter, <http://www.citizensforethics.org/files/20090515%20-%20Coleman%20Letter%20to%20FEC.pdf>, with the Federal Election Commission (FEC) opposing former Sen. Norm Coleman's (R-MN) request to use campaign funds for litigation expenses. Sen. Coleman stated that he may be called as a witness in ongoing litigation in Texas and Delaware.

Campaign funds may not be used for personal use, but the FEC decides whether to permit the use of campaign funds to pay for legal fees and expenses on a case-by-case basis. Here, Senator Coleman is seeking the FEC's permission to use campaign funds to pay legal fees and expenses incurred to prepare for an event that may never occur. Neither of the civil suits alleges that former Senator Coleman committed any wrongdoing or was even aware of any wrongdoing allegedly committed by others. Whether Sen. Coleman may be asked to testify in one or both civil proceedings at some undetermined point in the future is merely hypothetical, and commission regulations prohibit the issuance of an advisory opinion to address a hypothetical situation.

Even if the FEC allows Sen. Coleman to use campaign funds to prepare for the possibility that he may have to testify in these civil suits, the Commission should, at the very least, stipulate that the Coleman for Senate '08 committee may not use any funds derived from the Coleman Minnesota Recount Committee (Recount Committee) to pay these costs.

On December 12, 2008, the Recount Committee transferred \$81,375.13 to Coleman for Senate '08. In the first quarter of 2009, the Recount Committee made an additional ten transfers of funds totaling \$244,318.54 to Coleman for Senate '08, which is more than half of the \$469,563.73 Coleman for Senate '08 had in cash-on-hand on March 31, 2009. Additional transfers may, and most likely have, taken place since Coleman for Senate '08 closed its books to file its April 2009 Quarterly Report on March 31, 2009. It is possible that funds derived from the Recount Committee make up a substantial majority of the funds now held by Coleman for Senate '08.

The FEC has held that Recount Committee funds may not be used for anything other than recount activities. Therefore, recount funds can only be used to pay for post-election litigation concerning the casting and counting of ballots during the federal election and cannot be used to pay for any other legal fees. Because the litigation costs Coleman for Senate '08 seeks to pay are not in connection with the

general election campaign that ended on November 4, 2008, the committee cannot use Recount Committee funds for these costs.

Campaign funds should be used for campaign purposes and not for every legal expense a candidate incurs. The FEC has expanded the exceptions to the ban on using campaign funds for personal use so much that they swallow the rule. This is a good time for the Commission to cut back. At a minimum, the rules prohibit recount funds from being used for anything for recount purposes. As a result, Sen. Coleman cannot be permitted to use his recount funds to prepare for possible testimony in a civil case.

Thank you for the opportunity to bring these remarks to your attention.

Mindful of the enormous responsibilities which stand before you, I am,

Yours sincerely,
Robert E. Rutkowski

cc:
House Leadership

[REDACTED]
Topeka, Kansas [REDACTED]

[REDACTED]
E-mail: [rutkowski@\[REDACTED\]](mailto:rutkowski@[REDACTED])