



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 27, 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2010-28

Neil P. Reiff, Esq.
Sandler, Reiff & Young, PC
300 M Street, SE, Suite 1102
Washington, DC 20003

Dear Mr. Reiff:

We are responding to your advisory opinion request on behalf of the Indiana Democratic Congressional Victory Committee (the "State Committee") and Hoosiers for Hill concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the refund of funds transferred by Hoosiers for Hill to the State Committee. The Commission concludes that the State Committee may refund the transferred funds to Hoosiers for Hill without making a contribution subject to the amount limitations of the Act.

Background

The facts presented in this advisory opinion are based on your letter received on October 5, 2010 and email dated October 12, 2010.

The State Committee is registered with the Commission as a State committee of a political party. Hoosiers for Hill is the principal campaign committee of Representative Baron Hill, a candidate for the U.S. House of Representatives for the 9th Congressional District of Indiana.

Hoosiers for Hill transferred \$34,600 to the State Committee's Federal account on September 14, 2010. The State Committee received the transfer on September 17, 2010. The requestors represent that the transfer was made in accordance with 2 U.S.C. 439a(a)(4). Hoosiers for Hill made the transfer with the understanding that the State Committee would engage in general party projects on behalf of its candidates in connection with the 2010 general election. Because the State Committee will not be engaging in those activities, Hoosiers for Hill has requested, and the State Committee has

agreed, to a refund of the full amount of the transfer so that Hoosiers for Hill may itself use the funds in connection with its general election campaign.

Question Presented

May the State Committee refund all or a portion of the funds transferred by Hoosiers for Hill without making a contribution subject to the limitations of 2 U.S.C. 441a(a)(2)(A)?¹

Legal Analysis and Conclusions

Yes, the State Committee may refund all or a portion of the funds transferred by Hoosiers for Hill without making a contribution subject to the limitations of 2 U.S.C. 441a(a)(2)(A).

The Act provides that a contribution accepted by a candidate may be used by the candidate “for transfers, without limitation, to a national, State, or local committee of a political party.” 2 U.S.C. 439a(a)(4); *see also* 11 CFR 113.2(c). These provisions do not limit the purposes that any transferred funds may be put to, nor do they restrict the amount that may be transferred in any specific period of time. Advisory Opinion 2004-22 (Bereuter). A transfer pursuant to 2 U.S.C. 439a(a)(4) and 11 CFR 113.2(c) is not subject to the contribution limitation in 2 U.S.C. 441a(a)(1)(D) or 11 CFR 110.1(c)(5).² Advisory Opinion 2004-22 (Bereuter).

Although the Act and Commission regulations provide for the refund of contributions, they do not address the specific question presented here. *See* 2 U.S.C. 434(b)(4)(F) (requiring political committees to report contribution refunds); 2 U.S.C. 434(b)(5)(E) (requiring political committees to report the name and address of each person who receives a contribution refund, and the date and amount of the disbursement); 11 CFR 103.3(b) (requiring the refund or return of illegal contributions). In Advisory Opinion 2002-08 (Vitter), however, the Commission concluded that a Federal candidate’s State office exploratory committee could refund \$700,500 that had been transferred to it from the Federal candidate’s principal campaign committee, notwithstanding the fact that the amount of the refund would far exceed the applicable contribution limits.³ Similarly,

¹ Section 441a(a)(2)(A) prohibits multicandidate committees from making contributions to any candidate or authorized political committee with respect to any election for Federal office which, in the aggregate, exceed \$5,000.

² For the purposes of this advisory opinion, the Commission presumes that the funds transferred from Hoosiers for Hill to the State Committee complied with the limitations, prohibitions, and reporting requirements of the Act. *See* 2 U.S.C. 441i(e)(1)(A); 11 CFR 300.61.

³ In Advisory Opinion 2002-08 (Vitter), the Commission determined that the refund would not implicate the prohibition on transfers of funds from a candidate’s campaign committee for non-Federal office to the candidate’s authorized committee for a Federal election because the Federal committee had raised the funds entirely under the limits and prohibitions of the Act; the State committee had not commingled the funds

in Advisory Opinion 1995-43 (Packwood), the Commission determined that a refund by a law firm of \$150,000 in legal fees that had been paid by a Federal candidate would not be a contribution to the candidate, when the scope of the services to be provided by the law firm had been “materially altered” from that originally contemplated by the parties.

In the instant situation, the Commission concludes that the State Committee may refund the transferred funds to Hoosiers for Hill without making a contribution subject to the amount limitations of the Act. Hoosiers for Hill transferred the funds from its Federal account to the State Committee’s Federal account, and there is no indication that the funds were comingled at any time with non-Federal funds. *See* Advisory Opinion 2002-08 (Vitter). Moreover, the transfer was made, in part, with the understanding that the State Committee would undertake certain activities, which the State Committee is not, in fact, undertaking. Thus, the circumstances justifying the transfer have been materially altered. *See* Advisory Opinion 1995-43 (Packwood). The transfer also occurred just weeks before the requestors submitted this advisory opinion request, which supports a determination that this is a refund rather than a contribution subject to the amount limitations of the Act. Indeed, this short time period is well within the thirty- and sixty-day periods prescribed in Commission regulations for refunding contributions. *See* 11 CFR 103.3(b).

If the State Committee decides to refund the transferred funds to Hoosiers for Hill, the transfer should be made within ten days after receiving this opinion. *Cf.* 11 CFR 103.3(a) (all receipts of a political committee shall be deposited in the political committee’s account within ten days of the treasurer’s receipt of the funds); *see also* Advisory Opinion 2002-08 (Vitter). The State Committee and Hoosiers for Hill must maintain appropriate documentation of the refund made in accordance with this advisory opinion and disclose the refund on their reports filed with the Commission covering the period in which the refund is made and received. *See* 2 U.S.C. 432(c)(5); *see also* 11 CFR 102.9(b), 104.3(a)(3)(ix), 104.3(b)(1)(iv), and 104.3(b)(4). Because the Commission’s reporting forms do not provide a line for entry of the specific refund presented here, the State Committee should report its refund to Hoosiers for Hill on Schedule B, Line 28c of Form 3X, and Hoosiers for Hill should report its receipt of the refund on Schedule A, Line 15 of Form 3. The requestors should also include memo text in their reports, consistent with the conclusions of this advisory opinion, explaining the circumstances of the refund. *See* Advisory Opinion 2002-08 (Vitter).

The Commission expresses no opinion regarding the application of the rules of the U.S. House of Representatives to the proposed activities, because those rules are not within the Commission’s jurisdiction.

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. 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

with non-Federal funds; and the State committee had never used the funds, which remained intact in a segregated bank account. *See* 11 CFR 110.3(d).

conclusion presented in this advisory opinion, then the requestors may not rely on that conclusion as support for their proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law, including, but not limited to, statutes, regulations, advisory opinions, and case law. The cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

On behalf of the Commission,

(signed)
Matthew S. Petersen
Chairman