



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 28, 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2012-06

Mr. Salvatore Purpura
Treasurer
RickPerry.org
P.O. Box 1708
Austin, TX 78767

Dear Mr. Purpura:

We are responding to your advisory opinion request on behalf of RickPerry.org, Inc. (the “Committee”), concerning the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to its proposed conversion to a nonconnected committee, use of the Committee’s remaining primary election funds by the nonconnected committee, and the redesignation of general election campaign funds to the nonconnected committee or to Governor Perry’s State campaign committee.

The Commission concludes that the Committee may convert to a nonconnected committee and use its remaining primary election funds to finance the activities of the new nonconnected committee. The Commission could not approve a response to the remaining questions by the required four affirmative votes. *See* 2 U.S.C. 437c(c); 11 CFR 112.4(a).

Background

The facts presented in this advisory opinion are based on your letter received on February 13, 2012.

The Committee is Governor Rick Perry’s principal campaign committee for the 2012 presidential election. Governor Perry sought the Republican Party nomination for President until January 19, 2012, when he suspended his campaign. Before the suspension, the Committee accepted approximately \$270,000 in contributions designated for the general election. These funds have been maintained in a separate bank account and were not used for primary election expenses. The Committee has not accepted or solicited any contributions since the campaign’s suspension on January 19. The

Committee has no net debts or obligations outstanding from the primary election campaign.

The Committee proposes to transition from a principal campaign committee to a nonconnected committee by amending its Statement of Organization (FEC Form 1) by April 30, 2012. The Committee proposes to use the funds remaining in its primary election account to finance its activities as a nonconnected committee.

The Committee also proposes to obtain redesignations of the funds in its general election account for use by the new nonconnected committee. On January 19, the Committee mailed letters to its general election contributors asking them to redesignate their contributions “so that they may remain in the Committee’s account and be used for purposes consistent with the Committee’s proposed new nonconnected PAC status.” The Committee maintains a detailed tracking sheet, updated daily, showing the status of each contribution. As of February 13, the Committee had received redesignation approvals for nearly \$30,000 and refund requests for at least \$100,000 of the general election contributions. The Committee intends to refund all general election contributions for which it has received refund requests by March 19.

Questions Presented

1. *May the Committee convert to a nonconnected committee and fund its activities with its remaining primary election funds or, alternatively, donate its remaining primary election funds to Governor Perry’s State campaign committee?*
2. *May the Committee obtain redesignations of its general election contributions to finance its activities as a nonconnected committee?*
3. *May the Committee obtain redesignations of its general election contributions to fund Governor Perry’s State campaign committee, to the extent permissible under Texas State law?*

Legal Analysis and Conclusions

1. *May the Committee convert to a nonconnected committee and fund its activities with its remaining primary election funds or, alternatively, donate its remaining primary election funds to Governor Perry’s State campaign committee?*

Yes, the Committee may convert to a nonconnected committee and fund its activities with its remaining primary election funds or, alternatively, donate its remaining primary election funds to Governor Perry’s State campaign committee, subject to State law.

The Act and Commission regulations identify six categories of permissible uses of contributions accepted by a Federal candidate, including “for any other lawful purpose.” 2 U.S.C. 439a(a)(6); 11 CFR 113.2(e). Such contributions, however, may not

be converted to the “personal use” of any person. 2 U.S.C. 439a(b)(1); 11 CFR 113.1(g). “Personal use” is defined as “any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligations or expense of any person that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.” 11 CFR 113.1(g); *see also* 2 U.S.C. 439a(b)(2).

The Commission has long interpreted these provisions of the Act and Commission regulations as permitting candidates to convert their authorized committees to nonconnected political committees, and to finance the activities of the nonconnected committees with contributions received by the candidates for elections in which the candidates had participated. *See, e.g.*, Advisory Opinion 1994-31 (Gallo), Advisory Opinion 1993-22 (Roe),¹ Advisory Opinion 1988-41 (Stratton); *cf* Advisory Opinion 2004-03 (Dooley for the Valley).²

Accordingly, RickPerry.org may convert to a nonconnected committee by amending its Statement of Organization (FEC Form 1) and fund the nonconnected committee’s activities using its remaining primary election funds. Should the nonconnected committee wish to qualify as a multicandidate committee, it may count the time that the Committee was registered with the Commission, and the number of contributions made and received by the Committee in determining whether it qualifies as a multicandidate committee.³ *See, e.g.*, Advisory Opinion (1993-22) (Roe).

¹ In Advisory Opinion 1993-22 (Roe), an authorized committee converted to nonconnected status by creating a second committee, and the Commission approved the transfer of pre-conversion campaign funds to the nonconnected committee as a permissible transfer between affiliated committees. The Commission later amended its regulations to prohibit affiliation between authorized committees and entities other than authorized committees, and superseded Advisory Opinion 1993-22 (Roe) “to the extent [it] suggest[s] that an authorized committee can be affiliated with an unauthorized committee.” Explanation and Justification for Final Rules on Leadership PACs, 68 FR 67013, 67018 (Dec. 1, 2003); 11 CFR 100.5(g)(5).

² In Advisory Opinion 2004-03 (Dooley for the Valley), the Commission concluded that certain restrictions on the use of campaign funds by a principal campaign committee remained in place after it had converted to a nonconnected committee. This advisory opinion was issued after Congress had amended 2 U.S.C. 439a(a) by removing “any other lawful purpose” as a permissible use of campaign funds. *See* Bipartisan Campaign Reform Act, Pub. L. No. 107-155, 116 Stat. 81 (2002); Explanation and Justification for Final Rules on Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 FR 76962, 76974-75 (Dec. 13, 2002). After Congress added “any other lawful purpose” back to 2 U.S.C. 439a(a), the advisory opinion was superseded “to the extent that [it] placed certain limitations on an authorized committee that had converted into a multicandidate committee and its use . . . of funds that had been received when the committee was an authorized committee.” Explanation and Justification for Final Rules on Use of Campaign Funds for Donations to Non-Federal Candidates and Any Other Lawful Purpose Other than Personal Use, 72 FR 56245, 56246 (Oct. 3, 2007); *see also* Consolidated Appropriations Act, Pub. L. No. 108-447, 118 Stat. 2809 (2004).

³ A committee qualifies as a multicandidate committee when it has been registered with the Commission or Secretary of the Senate for at least six months; has received contributions for Federal elections from more than 50 persons; and (except for any State political party organization) has made contributions to five or more Federal candidates. 2 U.S.C. 441a(a)(4); 11 CFR 100.5(e)(3).

The Act and Commission regulations also provide that contributions accepted by a Federal candidate may be donated “to State and local candidates subject to the provisions of State law,” so long as the contributions are not converted to the personal use of any person. 2 U.S.C. 439a(b)(1); 11 CFR 113.1(g). Accordingly, the Committee may, in the alternative, donate its remaining primary election funds to Governor Perry’s State campaign committee, subject to the provisions of Texas law and the personal use prohibition. 2 U.S.C. 439a(a)(5), (b); 11 CFR 113.1(g), 113.2(d), (g); *see also* Advisory Opinion 1993-10 (Colorado); Advisory Opinion 1996-52 (Andrews); Advisory Opinion 2007-29 (Jackson Jr.).

2. *May the Committee obtain redesignations of its general election contributions to finance its activities as a nonconnected committee?*

The Commission could not approve a response to Question 2 by the required four affirmative votes. *See* 2 U.S.C. 437c(c); 11 CFR 112.4(a).

3. *May the Committee obtain redesignations of its general election contributions to fund Governor Perry’s State campaign committee, to the extent permissible under Texas State law?*

The Commission could not approve a response to Question 3 by the required four affirmative votes. *See* 2 U.S.C. 437c(c); 11 CFR 112.4(a).

Although the Commission could not approve responses to Questions 2 and 3 by the required four affirmative votes, the Commission recognizes that the 60-day period for the Committee to comply with applicable rules would ordinarily expire on March 19, 2012, 60 days after Governor Perry suspended his presidential campaign (January 19, 2012). *See* 11 CFR 110.1(b)(3)(i), (b)(5); 110.2(b)(3)(i), (b)(5); 103.3(b)(3); Advisory Opinion 1992-15 (Russo) (the 60-day period begins to run on the date that the political committee “has actual notice of the need to obtain redesignations to the extent permissible. . . or refund the contribution[s]”).

On February 13, the Committee filed its advisory opinion request, with 35 days remaining in the 60-day period. Although “[n]ormally, the mere filing of an advisory opinion request does not toll any statutory or regulatory deadlines,” Advisory Opinion 2008-04 n.3 (Dodd for President), the Commission concludes that, because of the particular facts and circumstances presented here, the Committee has 35 days (the balance of the 60-day period remaining after the advisory opinion request was filed) to comply with applicable rules. *See also* Advisory Opinion 1992-15 (Russo).

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 conclusion presented in this advisory opinion, then the requestors may not rely on that conclusion as support for its 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 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 Web site at www.fec.gov, or directly from the Commission's advisory opinion searchable database at <http://www.fec.gov/searchao>.

On behalf of the Commission,

(signed)
Caroline C. Hunter
Chair