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By Office of the Commission Secretary at 2:59 pm, Jul 25, 2024



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

July 25, 2024

ADVISORY OPINION 2024-08

David Dolan
Good for Congress
P.O. Box 117
Lovingsston, VA 22949-0117

Dear Mr. Dolan:

We are responding to your advisory opinion request on behalf of Representative Bob Good and Good for Congress (collectively, “Requestors”), concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to Requestors’ proposal to seek contributors’ redesignations of general election contributions to a recount fund established by Good for Congress. The Commission concludes that Requestors may seek contributors’ redesignation of general election contributions to Good for Congress’s recount fund as proposed.

Background

The facts presented in this advisory opinion are based on your letter received on July 2, 2024, and publicly available information.

Rep. Bob Good represents Virginia’s 5th Congressional District in the United States House of Representatives, and Good for Congress is his principal campaign committee. Rep. Good was a candidate for the Republican nomination in the primary election for that office that was held on June 18, 2024. Based on the results of the primary election, Rep. Good will likely seek a recount, and because he will incur expenses relating to a recount, Good for Congress is establishing a recount fund.¹

Good for Congress has spent almost all of its primary election funds, and retains contributions designated for the general election. Requestors propose to ask the

¹ A recount for the primary election for Virginia's 5th congressional district has been scheduled by the Goochland County Circuit Court for Aug.1, 2024. Amended Preliminary Recount Order, Good v. McGuire, Civil Action No. CL24-500 (Goochland County Circuit Court, July 23, 2024).

contributors of those general election contributions to redesignate their contributions for the recount fund. Requestors state that they will comply with all required procedures for redesignations, including requesting redesignation from each contributor in writing, informing each contributor of the contributor's right to receive a refund instead of redesignating, and completing all redesignations within 60 days of the date of the primary election.

Question Presented

May Good for Congress seek permission from its general election contributors to redesignate their contributions from the general election to its recount fund, and then redesignate funds from those contributors who grant such permission?

Legal Analysis

Yes, Good for Congress may seek permission from its general election contributors to redesignate their contributions from the general election to its recount fund, and then redesignate funds from those contributors who grant such permission, as proposed.

The Act's limitations on contributions made to a candidate for federal office apply separately with respect to each election.² Commission regulations provide that a candidate or authorized committee may, prior to a primary election, accept contributions designated by the contributor for use in connection with the general election.³ But, "[i]f a candidate is not a candidate in the general election, any contributions made for the general election shall be refunded to the contributors, redesignated . . . or reattributed."⁴

In addition, the treasurer of an authorized committee may "request a written redesignation of a contribution by the contributor for a different election" when the contribution was designated for a particular election but received after that election, or when the contribution is excessive on its face or when aggregated with other contributions from the same contributor.⁵ A contribution is considered redesignated if the authorized committee requests a written redesignation from the contributor, informs

² 52 U.S.C. § 30116(a)(1)(i); 11 C.F.R. § 110.1(b)(2).

³ 11 C.F.R. §§ 102.9(e), 110.1(b)(2), 110.2(b)(2).

⁴ *Id.* § 102.9(e)(3); *see also id.* § 110.1(b)(3)(i) ("If the candidate is not a candidate in the general election, all contributions made for the general election shall be either returned or refunded to the contributors or redesignated . . . , or reattributed . . . , as appropriate."). As the Commission has explained, "where a general election is held, but the candidate does not participate in that election, no separate contribution limit for that general election is available to contributors." Contribution and Expenditure Limitations and Prohibitions; Contributions by Persons and Multicandidate Political Committees, 52 Fed. Reg. 760, 761 (Jan. 9, 1987) (internal citations omitted).

⁵ 11 C.F.R. § 110.1(b)(3)(i), (b)(5)(i).

the contributor of the contributor's right to receive a refund of the contribution as an alternative to redesignating it, and receives the contributor's redesignation in writing within 60 days after receiving the original contribution.⁶

Although Commission regulations speak in terms of redesignating contributions “for a different election,”⁷ Requestors propose to request redesignations for a recount of the results of an election. Election recounts are not “elections” under the Act or Commission regulations.⁸ Indeed, Commission regulations expressly exempt funds raised and spent for recounts from the definitions of “contribution” and “expenditure.”⁹

Neither the Act nor Commission regulations expressly provide for the redesignation of contributions for a recount of an election, and the Commission has not previously considered whether an authorized committee may obtain such redesignations. That said, nothing in the Act or Commission regulations would prohibit such redesignations. Indeed, if it is ultimately determined that Rep. Good did not win the primary election, Requestors will be required to refund any general election contributions already received or seek their redesignation or reattribution.¹⁰ Further, the Commission has previously concluded that authorized committees could request the redesignation of contributions in circumstances not addressed in Commission regulations, such as for use in a potential special election and special election runoff,¹¹ and where the redesignations would not be received within 60 days after the committees' receipt of the original contributions,¹² so long as the redesignations otherwise complied with the regulatory requirements for redesignations.

In addition, any contributions redesignated for Requestors' recount fund must comply with the amount limitations, source prohibitions, and reporting requirements of the Act. The Commission has previously concluded that a recount of the votes cast in a

⁶ *Id.* § 110.1(b)(5)(ii). The Commission has concluded that a political committee may obtain redesignations of contributions more than 60 days after their receipt if the redesignations are due to a later event. *See* Advisory Opinion 2009-15 (Bill White for Texas) at 7.

⁷ 11 C.F.R. § 110.1(b)(5)(i); *see also id.* § 110.1(b)(5)(ii)(A), (iii) (referring to redesignation “for another election”).

⁸ *See* 52 U.S.C. § 30101(1); 11 C.F.R. § 100.2.

⁹ 11 C.F.R. §§ 100.91, 100.151.

¹⁰ *See* Advisory Opinion 2015-16 (Niger Innis for Congress) at 3-4.

¹¹ Advisory Opinion 2009-15 (Bill White for Texas).

¹² Advisory Opinion 2022-18 (Fleming *et al.*). Consistent with the Commission's previous conclusion that “a political committee may receive redesignations of contributions more than 60 days after the committee's receipt of the contributions, if there is a later event giving the committee notice of a reason to seek redesignation,” *id.* at 4, Requestors state that they will complete all redesignations within 60 days of the primary election.

federal election is “in connection with an election for federal office” under the Act;¹³ thus, any entity directly or indirectly established, financed, maintained or controlled by, or acting on behalf of, one or more federal officeholders or candidates may not solicit, receive, direct, transfer, or spend funds for expenses related to a federal election recount unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.¹⁴ Because Requestors propose to establish a fund to pay expenses related to a recount of the votes cast in a federal election, any monies solicited and raised for the fund, or directed, transferred, or spent by the fund, must comply with the Act’s amount limitations, source prohibitions, and reporting requirements. General election contributions redesignated by contributors for Requestors’ recount fund will comply with the Act’s amount limitations and source prohibitions because they were subject to the Act’s amount limitations and source prohibitions when originally received.¹⁵

Accordingly, the Commission concludes that Good for Congress may seek permission from its general election contributors to redesignate their contributions from the general election to its recount fund, and then redesignate funds from those contributors who grant such permission, as proposed.

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.¹⁶ 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 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.¹⁷ 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,

¹³ Advisory Opinion 2006-24 (Republican and Democratic Senatorial Committees) at 4.

¹⁴ 52 U.S.C. § 30125(e)(1)(A).

¹⁵ Because donations made in connection with a recount are not “contributions,” they are subject to a separate limit and are not aggregated with contributions to the candidate from the same persons for purposes of the Act’s contribution limits. Advisory Opinion 2006-24 (Republican and Democratic Senatorial Committees) at 6; *see also* Advisory Opinion 2019-02 (Bill Nelson for Senate) at 3.

¹⁶ *See* 52 U.S.C. § 30108.

¹⁷ *See id.* § 30108(c)(1)(B).

regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

A handwritten signature in black ink, reading "Sean J. Cooksey". The signature is written in a cursive style with a large, prominent initial "S".

Sean J. Cooksey,

Chairman