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By Office of the Commission Secretary at 2:13 pm, Apr 29, 2025



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

AGENDA DOCUMENT NO. 25-10-A
AGENDA ITEM
For the meeting of April 30, 2025

MEMORANDUM

April 8, 2025

TO: The Commission

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SUBJECT: Request for Commission Directive 69 Guidance on [REDACTED]
[REDACTED] (LRA 1219)

I. INTRODUCTION

The Office of Compliance (“OC”) and the Office of General Counsel (“OGC”) seek the Commission’s guidance on an issue arising from a Reports Analysis Division (“RAD”) query concerning the remediation of impermissible general election contributions by [REDACTED] (the “Committee”), as reported in a Termination Report.¹ The Committee received general election contributions that it was required to refund after losing the primary election. The Committee reported refunding most of the impermissible general election contributions and

¹ See RAD Request for OGC Informal Guidance: [REDACTED] (Jan. 21, 2025) (attached) (“RAD Request”). OGC initially replied to the RAD Request on February 20, 2025, with informal guidance (numbered LRA 1217) pursuant to Directive 69 sec. 1. On March 21, 2025, the Commissioners directed OGC to withdraw its informal guidance and OGC and OC to present the issue to the Commission pursuant to Directive 69 sec. 3. OGC withdrew its informal guidance in LRA 1217, opened this new matter (numbered LRA 1219), and presents the issue to the Commission in this memo.

removing [REDACTED] that remained in its account from uncashed general election contribution refund checks by donating that amount to a charitable organization.

The initial RAD Request sought informal OGC guidance “as to whether the disbursement of these funds to charity is impermissible.”² As explained further below, we recommend that the Commission conclude that the Committee’s disbursement of [REDACTED] in unrefunded general election contributions to [REDACTED] a 501(c)(3) charitable organization, was not permissible under the Federal Election Campaign Act.³

II. FACTUAL BACKGROUND

The Committee, the principal campaign committee of [REDACTED], reported receiving [REDACTED] in itemized 2024 general election contributions from individuals prior to the 2024 [REDACTED] primary election. After [REDACTED] lost the primary election, the Committee reported issuing itemized refunds of the general election contributions to individuals totaling [REDACTED].⁴ The Committee filed to terminate on [REDACTED], disclosing uncashed contribution refunds totaling [REDACTED].⁵ The Termination Report also reported a donation of [REDACTED], listing the purpose as “disgorgement of uncashed checks.”⁶

In its response to the RFAI concerning the disbursement to [REDACTED], the Committee asserted that it may donate the funds from the uncashed refund checks to charity because the Commission deadlocked on this question in a 2015 advisory opinion.⁷ The Committee also presented what it states are “examples of Committees disgorging funds to charity, and then subsequently terminating.”⁸

² RAD Request at 1.

³ 52 U.S.C. §§ 30101-45.

⁴ [REDACTED] (reporting refunds issued on [REDACTED]). The slight discrepancy between the [REDACTED] in itemized receipts and [REDACTED] in itemized refunds appears related to small errors and typos in election designations for receipts and/or refunds on the Committee’s reports.

⁵ [REDACTED].

⁶ *Id.* at 6. OGC and OC have only the information conveyed in the Committee’s reports as to the attempted refunds and the subsequent charitable donation. Because the subsequent donation of funds suggests the Committee concluded that it had made all possible efforts to refund the impermissible contributions before making the donation, the analysis in this memo assumes the Committee has made such efforts. OGC and OC take no position on whether the Committee could make additional efforts to refund.

⁷ [REDACTED] (citing AO 2015-16 (Niger Innis for Congress), in which Commission did not approve response to question on donations from charity from uncashed refund checks by required four votes).

⁸ RFAI Response (listing three such committees — [REDACTED],

III. ANALYSIS

A. General Election Contributions Received Prior to Primary Election Loss, Generally

A candidate may accept contributions for the general election prior to the primary election.⁹ However, if a candidate committee “properly receives and handles contributions designated for the general election, yet does not become a candidate in the general election, the disposition of these general election contributions is expressly limited by Commission regulations.”¹⁰ As relevant here, “[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.”¹¹

B. Disbursement to Charity of Unsuccessfully Refunded General Election Contributions Received Prior to Primary Election Loss

Neither the Act nor Commission regulations explicitly addresses how a committee whose candidate lost the primary election may remove general election contributions from the campaign depository after unsuccessfully attempting to issue refunds to those contributors.

In Advisory Opinion 2003-18 (Bob Smith for U.S. Senate) (“AO 2003-18”), the Commission specifically addressed whether a committee could donate funds to a charity when those funds were general election receipts remaining in its account after its candidate had lost the primary election and contributors did not cash the refund checks. The Commission analyzed the issue under the provision now codified at 52 U.S.C. § 30114 that lists permissible uses of a candidate committee’s funds, including “for contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986.”¹²

The Commission explained that a candidate who was defeated in the primary election was “never a candidate for the general election, and consequently no separate contribution limit with respect to the general election was available to contributors.”¹³ Thus, “contributions

[REDACTED] — as well as a fourth non-terminating committee, [REDACTED], which the Committee asserts has reported “disgorgement of impermissible funds to charities”).

⁹ See 11 C.F.R. § 102.9(e)(1).

¹⁰ Advisory Opinion 2003-18 (Bob Smith for U.S. Senate) at 2.

¹¹ 11 C.F.R. § 102.9(e)(3) (emphasis added) (also allowing for redesignation or reattribution, though such options are not now available to the Committee because the time frames for such actions have ended and because the Committee wishes to terminate rather than support the candidate in a future election).

¹² 52 U.S.C. § 30114(a); see also 11 C.F.R. § 113.2(b) (same).

¹³ AO 2003-18 at 3; see also Contribution and Expenditure Limitations and Prohibitions; Contributions by Persons and Multicandidate Political Committee, 52 Fed. Reg. 760, 761 (Jan. 9, 1987) (favorably citing several older advisory opinions for the proposition that “no separate contribution limit for that general election is available to contributors” to a candidate who lost in the primary election, in the context of limiting post-election receipts to

received during the primary election period that were specifically designated for the general election must not be treated as permissible campaign funds, and such funds are not usable in accordance with [52 U.S.C. 30114] and 11 C.F.R. Part 113.”¹⁴ The Commission further explained that the provisions in the Act and Commission regulations that expressly permit candidate committees to donate campaign funds to charitable organizations “are not applicable” to unrefunded general election contributions for a candidate who lost in the primary election “because both [52 U.S.C. § 30114] and 11 CFR Part 113 are conditioned upon the permissibility of the contributions *received* by the committee.”¹⁵ Thus, the Commission concluded that “funds comprised of contributions designated for the general election may not be donated to [a charitable organization] because such use is not among the uses permitted in 11 CFR 102.9(e)(3).”¹⁶

Advisory Opinion 2003-18 (Bob Smith for U.S. Senate) remains valid. Though the Commission could reach a different conclusion in a later advisory opinion that asked the same question, a deadlocked vote in which the Commission does not render an answer to an advisory opinion request is of no effect.¹⁷ Because the Commission has never superseded AO 2003-18, AO 2003-18’s conclusions remain valid interpretations of the Act and Commission regulations.¹⁸

Moreover, the three candidate committees cited in the Committee’s RFAI Response present materially distinguishable facts from those of the Committee. Each pre-termination disbursement to charity in the examples the Committee identified appears to be a disbursement

net debts outstanding).

¹⁴ AO 2003-18 at 3; *cf.* 11 C.F.R. § 103.3(b)(4) (“Any contribution which appears to be illegal...and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal.”).

¹⁵ AO 2003-18 at n.5 (emphasis added).

¹⁶ *Id.* at 3; *see also id.* at 4 (also concluding that, after completing the refund process in which refund checks become stale, “[a]ny unrefunded general election contributions still in the Committee’s possession ...must be disgorged to the U.S. Treasury”).

¹⁷ *See* 11 C.F.R. § 112.5(a) (specifying conditions under which persons may rely on an advisory opinion “rendered by the Commission”); *cf.* Statement of Vice Chair Dickerson Regarding Advisory Opinion 2021-01 (Aluminate, Inc.) at 3 (June 14, 2021) (“Advisory opinions are not casual pronouncements; the Act specifically immunizes requesters from legal liability for relying on them, and we have long stated, correctly, that materially similar fact patterns are also protected.”); Statement of Chair Hunter and Commissioner Petersen on Advisory Opinion 2012-19 (American Future Fund) and *The Hispanic Leadership Fund, Inc. v. Federal Election Commission* (Sept. 20, 2012) (stating “the Commission has taken no official action on the issues presented” in the deadlocked advisory opinion and “may not adopt or impose a new legal norm prospectively without at least four approving Commissioners”).

¹⁸ *See* AO 2007-03 (Obama) at 4 (positively citing AO 2003-18 and concluding that if then-Senator Obama accepted public funds for the general election and if he “is unable to process a refund for any reason, the unrefunded funds must be promptly disgorged to the U.S. Treasury”). While both AO 2003-18 and AO 2007-03 concluded that, after unsuccessful attempts to refund contributions, a committee must disgorge the unrefunded amount to the U.S. Treasury, we need not reach that question in this matter. Here, we need only determine whether the disbursement to charity was permissible.

of permissible (though residual) funds. The fact that the [REDACTED] committee reports characterized some disbursements to charity as “disgorgements” does not alter RAD’s assessment that these committees in fact donated permissible funds.

IV. CONCLUSION

The Committee’s disbursement of uncashed refunds of general election contributions to a charitable organization is materially indistinguishable from the facts relevant to the conclusion in AO 2003-18. Just as in AO 2003-18, the Committee received contributions for an election in which [REDACTED] was not a candidate, attempted to refund those contributions, and could not remove the impermissible funds from its account when contributors did not cash the refund checks. Therefore, consistent with the Commission’s conclusion in AO 2003-18 as to the interpretation of the statutory and regulatory sections cited therein, including 11 C.F.R. § 102.9(e)(3), the Committee’s disbursement to [REDACTED] was an impermissible use of those funds.

V. RECOMMENDATION

For the reasons stated above, we recommend that the Commission conclude that [REDACTED]’s disbursement to [REDACTED] in unrefunded general election contributions was not permissible.

Attachment:

RAD Request for OGC Informal Guidance: [REDACTED]

RAD Request for OGC Informal Guidance: [REDACTED]

Summary:

RAD would like to request informal guidance from the OGC Compliance Advice (CA) Team in connection with [REDACTED]. The committee donated funds resulting from uncashed checks for impermissible general election contributions to charity, instead of disgorging them to the U.S. Treasury. RAD requests guidance as to whether the disbursement of these funds to charity is impermissible.

Background:

[REDACTED] is the principal campaign committee of [REDACTED] in the 2023-24 election cycle.

On [REDACTED] lost the [REDACTED] Primary Election.¹ After the candidate's election loss, the committee issued refunds of 2024 general election contributions to the contributors. Subsequent to disclosing the refunds on its [REDACTED] [Report](#), the committee filed its [REDACTED] [Termination Report](#) on [REDACTED] disclosing uncashed refund checks totaling [REDACTED]. In addition, the committee's Termination Report disclosed the donation of this amount [REDACTED], a 501(c)(3) organization,² with the disbursement purpose of "uncashed checks."

In response to the [Request for Additional Information \(RFAI\)](#) from RAD citing failure to refund or disgorge the impermissible 2024 general election funds to the U.S. Treasury, sent on [REDACTED], the committee filed a [Form 99](#) on [REDACTED]. The Form 99 stated, in part:

"Campaign committees for candidates who do not advance beyond the primary, but have received general election funds, routinely disgorge uncashed and non-refundable (despite best efforts to do so) general election contributions to charities. In AO 2015-16, the Commission failed to conclude it was impermissible for terminating candidate committees to disgorge uncashed refunds of general election funds to charitable causes in which the candidate has no involvement.

The Committee made precisely such a charitable disgorgement to an independent charity, and subsequently terminated...

Further, there are numerous examples of Committees disgorging funds to charity, and then subsequently terminating."

Since [REDACTED] disclosed the donation of [REDACTED] in disallowed 2024 general election contributions to a 501(c)(3) organization, RAD would like to request OGC CA's advice on whether the repayment should be considered an impermissible remedy and warrant the

¹ See [REDACTED]

² See [REDACTED]

denial of the committee's termination request, per [2023-2024 RAD Review and Referral Procedures \(Standard 29\)](#).³

Attachment: RAD Communication Log

³ According to the [2023-2024 RAD Review and Referral Procedures \(Standard 29\)](#), a committee with outstanding obligations exceeding [REDACTED] is not eligible for termination approval.

RAD Communication Log

SENSITIVE

Committee ID: [REDACTED]

Multi-Candidate Status/Date: [REDACTED]

Committee Name: [REDACTED]
[REDACTED]

Date Effective:

Committee Designation: PRINCIPAL
CAMPAIGN COMMITTEE OF A CANDIDATE

Committee Type: [REDACTED]

Filing Frequency: [REDACTED]

Treasurer Name: [REDACTED]

Candidate ID: [REDACTED]

Committee [REDACTED]
Address: [REDACTED]

Candidate Name: [REDACTED]

Analyst Assigned: Bradley Austin

Special Interest Group: [REDACTED]

Analyst Extension: [REDACTED]

Contact	Communication Date & Time	Analyst	Type
[REDACTED]	[REDACTED]	Bradley Austin	Phone Call
Summary	[REDACTED] called regarding the Termination Report, received [REDACTED]. She had not received a response to the committee's termination request and wanted to check the status. I returned her call and left a message explaining the Request for Additional Information (RFAI) was sent to be printed and mailed rather than e-mailed to the committee. I noted there was an outstanding issue noted on the RFAI preventing termination and asked [REDACTED] to return my call at her convenience.		