FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 13, 1977

AO 1976-110

Arlene Sumimoto
Finance Committee
Akaka for Congress
Post Office Box 1305
Kaneohe, Hawaii 96744

Dear Ms. Sumimoto:

This refers to your letter of December 7, 1976, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a contribution received by the Akaka for Congress Committee.

Your letter indicates that the Akaka for Congress Committee ("the Committee") received a contribution of $500 for ticket purchases from a candidate for local office and that, subsequently, you were informed that the check was from the local candidate's campaign fund consisting of both corporate and noncorporate monies. You ask two questions:

1. If corporate and noncorporate funds are commingled, can the Akaka for Congress Committee retain funds from the candidate's campaign fund if the amount of the contribution ($500) does not exceed the total noncorporate portion of his total campaign fund?

2. If the funds can be segregated--noncorporate from corporate--can the Akaka for Congress Committee retain a contribution consisting of identifiable noncorporate funds from the candidate's campaign fund?

The answer to both questions is in the negative.

Under 2 U.S.C. §441b corporations and labor organizations are prohibited from making a "contribution or expenditure in connection with any [Federal] election . . .". For purposes of this prohibition the term "contribution or expenditure" is defined to include "any direct or indirect payment . . . or gift of money . . . to any [Federal] candidate, [or] campaign committee . . .". The described contribution represents an indirect corporate contribution since the campaign committee of the candidate for local office from which the contribution was received commingled its funds without regard to their source. In view of the commingling, the local campaign committee could not on any reliable basis establish that the funds contributed to your Committee were in fact donated to the local candidate by a noncorporate donor. Of course, it would be permissible for the local candidate to make an otherwise proper contribution to your Committee from his or her personal funds, assuming that all other contributions from the same individual would not exceed the contribution limit of $1,000 per election. 2 U.S.C. §441a(a).

You may wish to note in this connection §102.6 of the Commission's proposed regulations (copy enclosed) which sets forth alternatives by which committees which wish to participate in local, State, and Federal elections may segregate their funds to conform to the requirements of the Act. The campaign committee of the local candidate which made the $500 contribution to your Committee was apparently not organized pursuant to this section. Thus, the amount of the contribution ($500) is required to be returned to the donor to avoid a violation of 2 U.S.C. §441b. See §103.3(b) of the proposed regulations.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Sincerely yours,

(signed)
Vernon W. Thomson
Chairman for the
Federal Election Commission