FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 14, 1978

AO 1978-7

Mr. W. Dent Gitchel
Cearley, Gitchel, Bogard and Mitchell, P.A.
1014 West Third Street
Little Rock, Arkansas 72201

Dear Mr. Gitchel:

This responds to your letter dated January 24, 1978, which requests an advisory opinion regarding the reporting requirements of the Federal Election Campaign Act of 1971, as amended ("the Act"), as applied to a contribution to a candidate's campaign committee from decedents' estates.

You are campaign counsel to the Jim Guy Tucker for Senate Campaign Committee, the candidate's principal campaign committee. The Committee has received a $1,000 cashiers check as a contribution from a limited partnership known as "The Matthews Co., a partnership" ("Matthews"). Matthews is composed of seven partners; two are decedents' estates which, as you indicated in a telephone conversation with the Commission's legal staff, very likely involve trusts. Each estate's pro rata share in the partnership is sufficient that its portion of the contribution exceeds $100.00. You ask how the Committee should attribute the estates' portions of the contribution for purposes of complying with the reporting requirements of the Act. 2 U.S.C. 434; 11 CFR 104.

Neither the Act nor Commission regulations specifically provide for attribution of contributions by estates. In defining the term "person," which is of particular relevance in 434 and 441a requiring disclosure and limiting contributions made by persons, the Act provides that person means: "an individual, partnership, committee, association, corporation, labor organization, and any other organization or group of persons."

The Commission has recognized that when funds are distributed to a candidate for Federal office through a trust, a question is raised as to the "person" to whom a "contribution" should be attributed for disclosure and limit purposes.[x] For example, under Commission

[x] See by analogy, 110.10(b)(2) which provides that personal funds of a candidate may include "income from trusts established before candidacy; [and] income from trusts established by bequest after candidacy of which the candidate is the beneficiary . . ." The implication from this definition of "personal funds" is that under certain

regulations, contributions from a trust established for the benefit of a minor child (under 18) are attributed to the child if (i) he or she makes a knowing and voluntary decision to contribute, (ii) the funds are owned or controlled exclusively by the child, and (iii) the contribution is not made from the proceeds of a gift given to the child for the purpose of providing funds to be contributed to a candidate for Federal office. 11 CFR 110.1(i)(2). If the minor child's contribution does not satisfy the stated criteria, the contribution must be attributed to someone else, e.g. the parent or legal guardian of the child. See also 2 U.S.C. 441f and 11 CFR 110.4(b). It is also significant that Commission regulations relating to the matchability of contributions to a presidential candidate seeking the nomination of a political party require that contributions by check drawn on a trust account be attributed to the person having "beneficial ownership of the account" and be signed by that person. 11 CFR 130.8(c)(2).

On the basis of the foregoing discussion, the Commission concludes that the pro rata shares of the partnership contribution allocable to the two decedents' estates must be treated as contributions from the living beneficiaries of those estates according to their interest in the estate under the relevant testamentary and trust instruments. However, the contributions may be so attributed only if (i) the beneficiaries have capacity under relevant state law to make a knowing and voluntary decision to contribute and (ii) such a contribution is otherwise lawful under the Act and Commission regulations. Alternatively, the partners (including representatives of the 2 estates) may agree to allocate the contribution only among the living partners and provide instructions to the committee as to the agreed upon allocation. In this connection Commission regulations at 11 CFR 110.1(e) provide for the attribution of partnership contributions. See also 11 CFR 104.5(e) concerning disclosure of contributions made by one instrument but attributed to several contributors.

This opinion should not be read as reaching any conclusion regarding the proper attribution of a contribution which is made by a trust when the settlor is still living and is not attributed to a minor child pursuant to 11 CFR 110.1(i)(2). Nor does this opinion mean that contributions by specific bequest to political committees, such as national, state, or local political party committees, may not be properly attributed to the decedent-testator for purposes of the Act and Commission regulations.

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

Sincerely yours,

(signed)
Thomas E. Harris
Chairman for the
Federal Election Commission

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circumstances trust income of a candidate will be considered a contribution under the Act and thus subject to 441a limits; however, there is no suggestion that such a contribution is barred solely by reason of its distribution through a trust.