



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 7, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-113

H. Oliver Welch
Treasurer, Zell Miller for U.S. Senate Committee
c/o Hall & Fishman, P.C.
Tower Place - Suite 1940
3340 Peachtree Road, N.E.
Atlanta, Georgia 30326

Dear Mr. Welch:

This responds to your letter dated September 17, 1980, requesting an advisory opinion on behalf of the Zell Miller for U.S. Senate Committee ("the Committee") of which you are treasurer, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to proper disposition of excess campaign funds held by the Committee.

You state that the Committee currently holds approximately \$10,000 in excess campaign funds. You state further that at the beginning of Mr. Miller's campaign for Federal office, an amount in excess of \$25,000 was transferred from Mr. Miller's State campaign fund to the Zell Miller for U.S. Senate account. Mr. Miller is presently serving as Lieutenant Governor for the State of Georgia.

You ask specifically whether the described excess campaign funds may be used for any or all of the following purposes:

- 1) to establish a campaign fund for future state or local office;
- 2) to establish a campaign fund for future national office;
- 3) to establish a fund for the candidate to use in carrying out his duties as Lt. Governor;
- 4) to establish a fund for the candidate's wife to use in traveling with the Lt. Governor when he is carrying out official state business;

5) to reimburse the prior state fund for monies transferred from the state fund to the U.S. Senate campaign fund.

Under the Act and Commission regulations, excess campaign funds may be used for a variety of specific purposes expressly made lawful: The funds may be used to defray any ordinary and necessary expenses incurred in connection with a candidate's duties as a Federal officeholder; they may be contributed to any organization which is exempt from Federal taxation under 26 U.S.C. 501(c); they may be contributed without limitation to any national, state, or local committee of a political party; or they may be used for "any other lawful purpose". Such funds may not be converted by any person to any personal use if the candidate involved was not a Member of Congress on January 8, 1980. See 2 U.S.C. 439a and 11 CFR 113.2.

The Commission's regulations provide that surplus funds from a prior campaign committee may be transferred to a current campaign committee of the same individual provided none of the funds transferred contain contributions which would be in violation of the Act. 11 CFR 110.3(a)(2)(iv). Thus, the Commission concludes that in the absence of any Georgia statute to the contrary, it would be permissible for the Committee to dispose of its excess campaign funds by establishing a campaign fund for Mr. Miller's future campaigns for Federal, state or local office and also by reimbursing Mr. Miller's state campaign fund for monies transferred from that fund to the Committee at the beginning of Mr. Miller's campaign for Federal office. This conclusion is based on the assumption that the excess funds transferred back to Mr. Miller state campaign account or placed in accounts for future campaigns for elective office are, in fact, used for campaign purposes.¹

With regard to the use of excess campaign funds by Mr. Miller in carrying out his official State duties, the Commission concludes that it would be permissible under the Act for the Committee or Mr. Miller to establish a fund for his use in carrying out his official duties as Lt. Governor. Thus, in the absence of any Georgia statute to the contrary, the excess campaign funds held by the Committee may lawfully be used to establish a fund to defray expenses incurred by Mr. Miller in carrying out his official state duties in his capacity as Lt. Governor.

However, with regard to the establishment of a fund to defray the travel expenses of Mr. Miller's wife when she accompanies him as he carries out his duties as Lt. Governor, the Commission notes that your request contains no indication that the appearances of the Lt. Governor's wife are incident to Mr. Miller's duties as a holder of State office. Thus, in the absence of specific factual information showing some official purpose for travel and appearances by the Lt. Governor's wife, the Commission concludes that a fund established to defray the travel expenses of the wife of a State officeholder would constitute a "personal use" of excess

¹ The Commission considers it significant that for purposes of Federal income taxation, the Internal Revenue code treats funds transferred between political organizations which influence or attempt to influence the selection, nomination, election or appointment of any individual to any Federal, State or local public office, as amounts not diverted for the personal use of the candidate or any other person. See generally, 26 U.S.C. 527(d) and (e).

campaign funds under the Act. Since Mr. Miller was not a Member of Congress on January 8, 1980, a fund established for the described personal use of excess campaign funds would be improper under 2 U.S.C. 439a and 11 CFR 113.2.²

The Commission expresses no opinion as to the possible Federal tax ramifications presented by this request since those issues are not within its jurisdiction.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in our request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Max L. Friedersdorf
Chairman for the
Federal Election Commission

² The Commission notes that Advisory Opinion 1976-90, issued on October 15, 1976, concluded that the use of excess campaign funds by a retiring member of Congress to pay travel expenses of his wife when she accompanied him on congressional business was a "lawful purpose" under 2 U.S.C. 439a, absent any State law to the contrary. However, the 1979 Amendments to the Act have changed significantly the provisions of 2 U.S.C. 439a in this regard. Section 439a now provides that excess campaign funds of a candidate who was not a Member of Congress on January 8, 1980, may not be converted by any person to any personal use.