FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 15, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-17

Mark A. Kaplan
Chairperson
Vermont State Democratic Committee
109 South Winooski Avenue
Burlington, Vermont 05401

Dear Mr. Kaplan:

This responds to your letter dated March 5, 1981, requesting an advisory opinion on behalf of the Vermont State Democratic Committee ("the Committee") regarding the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to certain proposed activity by the Committee.

You state that the Committee wishes to borrow $13,000 from a Congressional officeholder who holds that amount of money in his campaign account "as a result of excess monies in his November, 1980 election campaign." Commission records indicate that the Committee maintains a Federal campaign committee which is registered with the Commission. You state further that the Committee would repay the loan within a three month period and you ask specifically whether this transaction is lawful under the Act and Commission regulations.

The Commission concludes, based on the factual situation presented, that a loan from the officeholder in question to the Committee in the amount of $13,000 is permissible under the Act and regulations.

Generally, a loan as described in your request would be regarded as a contribution and thus would be subject to the contribution limits of 2 U.S.C. 441a, assuming the borrower is a political committee as defined by the Act. The term "contribution" includes "any gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office..." 2 U.S.C. 431(8)(A)(i). However, 439a provides for an exception to the contribution limits of 441a in certain situations. That section provides that excess campaign funds of a candidate may be used for a variety of specific

purposes (not relevant here), "including transfers without limitation" to any national, State, or local committee of any political party. 2 U.S.C. 439a and 11 CFR 113.2. Thus, if a candidate transfers excess campaign funds to the national, State or local committee of a political party, the contribution limits of 441a are inapplicable and the transfer is not limited. Moreover, in the context of 439a, the term "transfer" is indistinguishable from the term "contribution" which, by definition, includes loans. See 2 U.S.C. 431(8)(A)(i).

It appears that the funds which the Federal officeholder has agreed to loan to the Committee may be regarded as "excess campaign funds" under the Act. Thus, since the Committee is a State committee of a political party, the funds may be loaned to the Committee by the Federal officeholder without limitation. Repayment of the loan is not a contribution by the Committee, but Commission regulations require that the repayment be made with funds contributed to the Committee by lawful sources. See 11 CFR 100.7(a)(1)(i)(D).

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 your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

John Warren McGarry
Chairman for the
Federal Election Commission