



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 23, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1983-34

Mr. James D. Marston
Doggett and Jacks
1206 San Antonio
Austin, Texas 78701 – 1887

Dear Mr. Marston:

This responds to your letter of September 30, 1983, requesting an advisory opinion on behalf of the Lloyd Doggett Campaign Fund concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the transfer of funds from Mr. Doggett's State campaign committee ("State committee") to his Federal campaign committee ("Federal committee").

You state that Lloyd Doggett is currently a state senator in Texas and is also a candidate for the United States Senate in the 1984 election cycle. You further state that Senator Doggett's State committee wishes to transfer certain funds to the Federal committee that were left over from his 1982 state senate campaign. Included among these funds are contributions the State committee received from Texas professional corporations. According to your request, the State committee also contains funds that were received from political action committees that were registered with the Texas Secretary of State, but not with the Commission. You ask whether funds received from Texas professional corporations and from committees not registered with the Commission may be transferred from the State committee to the Federal committee.

As a preliminary matter, the Commission wishes to point out that any transfer of funds from the State committee to the Federal committee would not be limited as a contribution, provided none of the funds transferred include contributions that would be in violation of the Act. 11 CFR 110.3(a)(2)(iv). However, such a transfer would have certain consequences on both committees, and depending on the source and amounts of the original contributions to the State committee, may have to be in a lesser amount than the total amount held by the State committee.

Specifically, if more than \$1,000 is transferred in a given calendar year, the State committee would become a political committee under the Act. See 2 U.S.C. 431(4); 11 CFR 100.5,

102.6(a). The State committee would then be required to register and report as a political committee, disclosing on its first report the sources of the funds then in its accounts. See 11 CFR 104.12. This cash-on-hand balance would be assumed to be composed of those contributions most recently received by the State committee, and the State committee would be required to itemize such prior contributions to the extent required by the Act and Commission regulations. See 2 U.S.C. 434(b) and 11 CFR 104.3(a). It would also be required to exclude from the funds, proposed to be transferred, any contributions not permissible under the Act. 11 CFR 104.12; Advisory Opinions 1982-52 and 1980-117, copies enclosed.

If the State committee transfers \$1,000 or less to the Federal committee during a calendar year, the State committee would not, by virtue of the transfer, become a political committee under the Act. See 11 CFR 102.6(a) and 100.5. Such a transfer could only be made, however, in accordance with the procedures set forth at 11 CFR 102.5(b). See also Advisory Opinion 1982-52.

With respect to your question as to whether contributions from Texas professional corporations may be transferred from the State committee to the Federal committee, the Commission concludes that because professional corporations are considered to be corporations under Texas law, see Tex. Rev. Civ. Stat. Ann., art. 1528e, such funds may not be contributed to the Federal committee. 2 U.S.C. 441b. Commission regulations at 11 CFR 114.7(d) provide that the corporate status of professional organizations is determined by State law. The Texas Professional Corporation Act by its terms clearly accords corporation status to entities that are organized thereunder.* You state that the Texas Election Code, which prohibits corporate contributions, has been interpreted as not applicable to contributions by professional corporations in state elections. This ruling by the Texas Attorney General is not dispositive of the issue with respect to possible application of the Act, since 2 U.S.C. 441b prohibits contributions by "any corporation whatever" in connection with Federal elections.

Finally, the Commission concludes that funds in the State committee that were contributed (in amounts of \$1,000 or less) by state political action committees as defined under Texas law, but not under the Act, may be included in amounts transferred to the Federal committee only if the conditions of 102.5(b)(1)(i) or 102.5(b)(1)(ii) are satisfied. The cited regulations apply to contributions made by organizations that are not political committees under the Act. Such organizations must follow one of two alternative procedures:

- (i) Establish a separate account to which only funds subject to the prohibitions and limitations of the Act shall be deposited and from which contributions, expenditures and exempted payments shall be made. Such organization shall keep records of deposits to and disbursements from such account and, upon request, shall make such records available for examination by the Commission.
- (ii) Demonstrate through a reasonable accounting method that whenever such organization makes a contribution, expenditure or exempted payment, that organization has received sufficient funds subject to the limitations and prohibitions of the Act to make such contribution, expenditure or payment.

Such organization shall keep records of amounts received or expended under this subsection and, upon request, shall make such records available for examination by the Commission.

Funds contributed to the State committee by any state political action committee in an amount over \$1,000 would not be transferable to the Federal committee. Such a contribution is limited to \$1,000 under 2 U.S.C. 441a(a)(1). The state political action committee would be a "person" as defined in 2 U.S.C. 431(11), and the \$1,000 limit applies to otherwise lawful contributions by a person.

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,

(signed)

Danny L. McDonald
Chairman for the Federal Election Commission

Enclosures (AOs 1982-52 and 1980-117)

*/ You have not asked the Commission to decide whether the state committee may transfer contributions derived from Texas professional associations. Thus, this opinion does not address the question whether such associations would be viewed as corporations for purposes of 2 U.S.C. 441b. See Tex. Rev. Civ. Stat. Ann., art. 1528f. See also 11 CFR 114.7(d).