



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 12, 1987

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-12

Amiel Cueto  
Cueto, Daley, Williams, Moore & Cueto, Ltd.  
Attorneys at Law  
123 West Main Street  
Belleville, Illinois 62220

Dear Mr. Cueto:

This responds to your letter of April 28, 1987, requesting an advisory opinion on behalf of Jerry Costello, the County Board Chairman of St. Clair County, Illinois, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed transfer of funds from a state committee to a Federal committee.

Your request states that in 1979 Mr. Costello formed the Committee to Elect Jerry Costello ("the state committee"), which was a state committee organized under the laws of Illinois. Under the auspices of this state committee, Mr. Costello has run for the office of County Board Chairman in the elections of 1980, 1982, and 1986. You note that since 1979, the state committee has conducted fundraising efforts, and that as of April 26, 1987, it had a balance of \$200,463. You state that of this amount, \$173,913 was raised through contributions of under \$1,000 from individuals; the remaining \$26,550 was raised from corporations, labor unions, and donations of more than \$1,000 from individuals. Your request includes a draft Schedule A that itemizes those contributions you believe to be lawfully transferable under the Act and regulations. This Schedule A listing indicates that the contributions were received by the state committee between August 23, 1985, and November 3, 1986.

You state that Mr. Costello intends to run for the U.S. House of Representatives from the 21st Congressional District of Illinois in 1988. In this connection, the state committee proposes to transfer \$45,268 to other state political committees, and to transfer the balance of \$155,194 to the Costello for Congress Committee ("the Federal committee"), which will be Mr. Costello's

principal campaign committee. You ask whether these proposed transfers are permissible under the Act and Commission regulations.

The Commission notes initially that because the two committees are controlled by Mr. Costello for his own campaign-related purposes (to seek local elective office and Federal office) they would be deemed to be affiliated with one another, and therefore a transfer of funds from his state committee to his Federal committee would not be subject to the Act's limitation on contributions set forth at 2 U.S.C. 441a(a). See Advisory Opinion 1984-46. Commission regulations recognize that two committees may be deemed to be "affiliates" of one another even though one of them is not a political committee under the Act. See 11 CFR 102.6(a)(1). Thus, the state committee would be regarded as affiliated with the Federal committee for the purpose of making the proposed transfer.

Although transfers of funds may be made without limit between affiliated committees, any such transfers would apply toward the threshold for determining whether the state committee is a political committee as defined at 11 CFR 100.5. See 11 CFR 102.6(a)(2). Because, in the situation you have presented, the proposed transfer to the Federal committee is in an amount greater than \$1,000, the state committee would become a political committee under the Act upon transferring the funds. See 2 U.S.C. 431(4)(A); 11 CFR 100.5(a) and 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 account. See 11 CFR 104.12. This cash on hand balance would be presumed to be composed of those contributions most recently received by the state committee, and the state committee would have to itemize such prior contributions to the extent required by the Act and Commission regulations. See 2 U.S.C. 434(b), 11 CFR 104.3(a). The state committee would also be required to exclude any contributions not permissible under the Act from those funds proposed to be transferred to the Federal committee. See 11 CFR 104.12 and Advisory Opinions 1984-46, 1984-3, 1983-34, 1982-52, and 1980-117. The state committee's initial report of the transfer of funds to its affiliated Federal committee may also serve as the state committee's termination report. See 11 CFR 102.3.

Assuming that none of the funds that the state committee proposes to transfer to the Federal committee come from prohibited sources, and assuming that both the state committee and the Federal committee meet the aforementioned registration and reporting obligations, the Commission concludes that the proposed transfers would be permissible under the Act and Commission regulations.

The Commission notes that because the contribution limits apply to the Federal committee and because the state committee, upon becoming a political committee under the Act, is affiliated with the Federal committee, the contribution limits of 2 U.S.C. 441a(a) will apply to the contributors of the \$155,194 that the state committee proposes to transfer to the Federal committee. Accordingly, the contributions of any person that are included in this amount may not exceed the \$1,000 limit of 2 U.S.C. 441a(a)(1)(A), or the \$5,000 limit of 2 U.S.C. 441a(a)(2)(A) if the contributor is a qualified multicandidate committee. See Advisory Opinion 1983-34. However, given your representation that contributions included in the transferred amount were made to the state committee before the 1986 general election, and at a time when you were not a candidate for Federal office with respect to the 1988 election cycle, they will not

have to be aggregated with later contributions made by the same donors directly to the Federal committee. See Advisory Opinions 1987-4 and 1982-52.

The Commission expresses no opinion concerning the application of any Illinois law that may govern disposition of Mr. Costello's state campaign funds.

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)

Scott E. Thomas  
Chairman for the Federal Election Commission

Enclosures (AO's 1987-4, 1984-46, 1984-3, 1983-34, 1982-52, and 1980-117)