



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 18, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-41

The Honorable Samuel S. Stratton
United States House of Representatives
2205 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Stratton:

This is in response to your letter of August 26, 1988, in which you request an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the reporting of political contributions that you received in 1987 and 1988 and to the use of funds held by your congressional campaign committee.

You explain that for 15 terms you have represented the 23rd Congressional District of New York. You intended to run for re-election in 1988 and held two fundraisers, one in April 1987 and the second in May 1988, in support of that effort. On July 18, 1988, however, four days after you filed for re-election and upon the advice of your doctors, you announced your retirement as of the end of your current term in 1989. You state that at the time you filed, you were unsure whether you would face opposition in the primary election.

You ask, first, whether the Stratton for Congress Campaign Committee, your principal campaign committee for the 1988 election cycle, should file amended reports with respect to contributions-it received in 1987 and 1988.¹ Second, you wish to know whether any of the contributions your committee received in 1987 and 1988 are "available to [you]." In connection with this second inquiry, you raise three subsidiary questions: May your committee "deduct expenses" incurred in 1987 and 1988? May the committee use campaign funds for expenses that you will incur in the remaining months of your term? And may your committee use some of those funds to make political contributions to 1988 campaigns?

In regard to your first inquiry, you state that your committee in its reports listed contributions received in 1987 and 1988 as "general" contributions if the contributions were not specifically

earmarked or designated "primary." The records that you have submitted with your request also show that some donors designated their contribution checks "general" for the general election.²

You were a congressional candidate until July 18, 1988, when your status as a candidate in the 1988 congressional election cycle terminated. Under the regulations, contributions that your campaign committee received during 1987 and up to July 18, 1988, that were not donor-designated are regarded as contributions made with respect to your 1988 primary election candidacy. 11 CFR 110.1(b)(2)(ii) and 110.2(b)(2)(ii). See also, e.g., Advisory Opinion 1986-12. Your committee, therefore, should have reported these non-designated contributions as primary election contributions, and appropriate amendments to the committee's previous reports should be filed within 30 days from the receipt of this opinion. Cf. 11 CFR 102.9(e).

Your second question raises several distinct matters. Because you are not a candidate with respect to the 1988 general election, your committee should return to your donors those contributions that they designated in 1987 and 1988 for your potential 1988 general election candidacy. 11 CFR 110.1(b)(3)(i) and 110.2(b)(3)(i) ("If the candidate is not a candidate in the general election, all contributions made for the general election shall be either returned or refunded to the contributors") See also 11 CFR 102.9(e)(2) and Advisory Opinions 1986-12 and 1985-41.

Different rules govern the campaign funds that you and your committee received in 1987 and 1988 with respect to the 1988 primary election, that is, contributions other than those designated by donors for the general election. Your committee need not return unspent primary election-related contributions to the donors. See Advisory Opinions 1986-12 and 1980-30. The committee may pay all lawful campaign-related expenditures from the contributions it lawfully received for the 1988 primary election or from funds carried over from a previous election cycle. As the Commission has stated in several prior advisory opinions, a candidate and his or her principal campaign committee have wide discretion under the Act in making expenditures to influence the candidate's nomination or election. See, e.g. Advisory Opinions 1988-13 and 1987-2.

Your committee may apply any excess campaign funds³ to expenses that you will incur in the remaining months of your term. The Act explicitly provides for this use. 2 U.S.C. 439a (excess campaign contributions may be used "to defray . . . ordinary and necessary expenses incurred in connection with [a candidate's or an individual's] duties as a holder of Federal office"). See also 11 CFR 113.1 and 113.2(a).

Your committee may also use its campaign funds to make political contributions to 1988 campaigns. 2 U.S.C. 431(11), 439a, and 441a(a)(1)(A); 11 CFR 100.10, 110.1, 113.1, and 113.2. See Advisory Opinion 1986-36. The contributions will be subject to the Act's limitations, however, if the donee is a Federal candidate or the candidate's authorized political committee or is any other "political committee" as defined by the Act and the regulations. 2 U.S.C. 431(4)(A) and (C), (8)(A), (9)(A), and 441a(a)(1); 11 CFR 110.1. The Act specifically allows "a contribution by any authorized committee in amounts of \$1,000 or less to an authorized committee of any other candidate." 2 U.S.C. 432(e)(3)(B). See also 11 CFR 102.13(c)(2).⁴

Campaign funds remaining after these distributions may be used for any "lawful purpose." 2 U.S.C. 439a; 11 CFR 113.2. Because you were a Representative on the date of the enactment of the 1979 Amendments to the Act (January 8, 1980), section 439a and 11 CFR 113.2 would not prohibit distribution of excess campaign funds for "personal use." Personal uses may be subject to State law. The Commission does not reach any conclusion with respect to application of State law to any personal use of the excess campaign funds. See, e.g., Advisory Opinion 1987-11.

Your committee is required to report all disbursements of its campaign funds. 2 U.S.C. 434(b)(4) and (b)(5); 11 CFR 104.3(b). Refunds to contributors are reportable as offsets. See 2 U.S.C. 434(b)(4)(F) and (b)(5)(E); 11 CFR 104.3(b)(2)(v) and (b)(4)(v). Payments for your expenses as a Federal officeholder and political contributions to other candidates or committees are reportable as "other disbursements." See 2 U.S.C. 434(b)(4)(G) and (b)(6)(A); 11 CFR 104.3(b)(2)(vi) and (b)(4)(vi).

The Commission expresses no opinion about possible application of House rules to the described activity, nor about any tax ramifications. These matters lie outside the Commission's jurisdiction.

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

Sincerely,

(signed)

Thomas J. Josefiak
Chairman for the Federal Election Commission

Enclosure (AOs 1988-13, 1987-11, 1987-2, 1986-36, 1986-12, 1985-41, 1985-30, and 1980-30)

1/ Although this question necessarily involves contributions previously received, the Commission considers it as primarily presenting prospective activity: the amending of reports and future refunds of certain contributions. See 11 CFR 112.1(b) and Advisory Opinion 1986-12. See also footnote 2.

2/ The Commission does not in this opinion make any determinations as to whether contributions previously made to the committee comply with the limits of the Act.

3/ Excess campaign funds are "amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures." 11 CFR 113.1(e).

4/ If your committee were to become a multicandidate committee, its limit with respect to contributions to a Federal candidate and his or her authorized committees would increase from \$1,000 per election to \$5,000 per election. 2 U.S.C. 441a(a)(2)(A) and 441a(a)(4). The

Commission has previously recognized that the principal campaign committee of an individual who is no longer a candidate may convert to multicandidate committee status. See, e.g., Advisory Opinions 1987-11 and 1985-30. The Commission notes that the converting committee must amend its Statement of Organization to redesignate itself as a nonconnected political committee "no later than 10 days after the date of the change." 2 U.S.C. 433(c).