



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

August 6, 1993

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1993-13

T. Michael Hurley Jr.  
White, Smith, Howard & Ajax  
300 Atlanta Financial Center South  
3333 Peachtree Road N.E.  
Atlanta, Georgia 30326

Dear Mr. Hurley:

This refers to your June 21, and July 8, 1993, letters concerning application of the Federal Election Campaign Act of 1971 ("the Act"), as amended, to a proposed use of remaining campaign funds from the 1992 Senate campaign of Mr. Wyche Fowler.

You state that you are the treasurer of the Fowler for Senate Campaign Committee (the "Committee") and have been directed by Mr. Fowler to disburse all remaining funds. At present, you state, the Committee has cash on hand of slightly over \$100,000, which Senator Fowler wishes to give to Oglethorpe University. The purpose of this donation would be to establish a scholarship program for minority students in the name of Charles L. Weltner, a former Chief Justice of the Georgia Supreme Court and a former U.S. Congressman.<sup>1/</sup>

You state your belief that this is an appropriate use of campaign funds by the Committee "under the Commission's charitable gift rules; but out of an abundance of caution," you request an advisory opinion as to the legality of this gift of campaign funds.

The Act provides, in part, that amounts "received by a candidate as contributions that are in excess of any amount necessary to defray [the candidate's] expenditures . . . may be contributed to any organization described in section 170(c)" of the Internal Revenue Code. 2 U.S.C. 439a. Commission regulations similarly provide that excess campaign funds may be contributed to any section 170(c) organization. 11 CFR 113.2(b). The regulations define the phrase "excess campaign funds" to mean "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).

The circumstances of your request, with no remaining Committee debt, indicate that the Committee has determined that the funds to be used for the donation are excess campaign funds. According to publicly available information provided by the Internal Revenue Service, the organization to which the Committee wishes to make its donation is a qualified section 170(c) organization. In past opinions, the Commission has concluded that such donations are permissible uses of excess campaign funds under the Act and Commission regulations. See Advisory Opinions 1993-6, 1992-21, and 1985-9. Therefore, the Commission concludes that the Committee may make the desired donation.<sup>2/</sup>

The Commission notes that the Committee is required to report all disbursements of its excess campaign funds. 2 U.S.C. 434(b)(4) and (5), and 11 CFR 104.3(b). Committee payments to Oglethorpe University would be reportable as other disbursements.<sup>3/</sup> See 2 U.S.C. 434(b)(4)(G) and (6)(A), 11 CFR 104.3(b)(2)(vi) and 104.3(b)(4)(vi).

The Commission expresses no opinion as to any tax ramifications of the proposed transaction, because that issue is 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 your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Scott E. Thomas  
Chairman

Enclosures (AOs 1993-6, 1992-21, and 1985-9)

#### ENDNOTES

1/ The last report filed by the Committee, the 1993 Mid Year Report, indicates that among other disbursements, on June 29, 1993, the Committee made a \$50,000 disbursement to Oglethorpe University.

Following the proposed disbursement, you state that the Committee will be inactive, remaining open only for the purpose of receiving rebates from broadcasters on overcharges and paying taxes and other outstanding obligations of the Committee. You state that the Committee will continue to file reports as required. You also state that Mr. Fowler has directed that the Committee receive no further campaign contributions from any source, and terminate as soon as possible, when all obligations have been satisfied and rebates have been received and disbursed.

2/ The Federal Election Campaign Act Amendments of 1979, Pub. L. 96-187, amended 2 U.S.C. 439a to prohibit any candidate or Member of Congress not in office on January 8, 1980 from converting any excess campaign funds to personal use, but allowed uses of such funds for the purposes set out in the statute. The Ethics Reform Act of 1989, Pub. L. 101-194, further amended this section to prohibit any Member of Congress who serves in the 103rd or a later Congress from converting excess campaign funds to personal use as of the first date of such service.

The Commission notes that Mr. Fowler was a Member of Congress on January 8, 1980. Since he did not serve in the 103rd Congress, Mr. Fowler qualifies as a "grandfathered" Member and thus is not prohibited by section 439a from converting excess campaign funds to personal use. Therefore, pursuant to Mr. Fowler's "grandfathered" status, even if the donation were not expressly permitted under section 439a, it could still be lawfully made under the Act.

3/ The Committee's June 29, 1993 disbursement to Oglethorpe University is reported on its 1993 Mid Year Report as an operating expenditure. The Committee's 1993 Mid Year Report should be amended in accordance with this advisory opinion.