FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 26, 1996

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996-40

The Honorable Mel Hancock
United States House of Representatives
Washington, D.C. 20515

Dear Representative Hancock:

This responds to your letters dated September 5 and July 16, 1996, with enclosures, which request an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a proposed donation by your campaign committee to the Taxpayers' Survival Association ("TSA"), a nonprofit corporation formed under Missouri statutes.

You indicate that you are not seeking re-election to the House of Representatives in the 1996 election cycle and will leave the Congress in January 1997. You propose to contribute the balance of your campaign funds to TSA. These funds are held by the Hancock for Congress committee which is your principal campaign committee. You ask whether this would be a permissible use of the committee's remaining campaign funds.

The materials submitted with your request indicate that the Taxpayers' Survival Association or TSA has been recognized by the Internal Revenue Service as a qualified educational foundation under 26 U.S.C. 501(c)(3). IRS Publication 78 (1991) includes a listing for TSA as an entity described in 170(c) of the Internal Revenue Code. Your request also explains that TSA was formed by you in 1977, and you have continued to serve at its President and Chairman of the Board.

In a letter dated June 25, 1996, to the House Committee on Standards of Official Conduct, you stated that at "no time has there been any inurement [from TSA] to me. The by- laws prohibit any director from being paid a salary or director fee." This letter also notes that reimbursement of incidental expenses for travel and lodging to attend TSA meetings is allowed under the by-laws.

In addition, you point out that your status with TSA will not change after you leave office. You expect to begin receiving social security benefits, effective January 1997, and state that this "would preclude me from a salaried position. I will not receive any compensation from the TSA and neither will any family member or resident of my household." You further explain that TSA may, in the future, employ an executive director, but that present plans do not contemplate doing so. No present or former congressional staff or campaign staff are being considered for such a position.

As you know, the Act provides that campaign funds may be donated to any organization described in 26 U.S.C. 170(c), but may not be "converted by any person to any personal use." 2 U.S.C. 439a, 11 CFR Part 113. The regulations provide that donations from campaign funds to 170(c) organizations are not personal use, unless the candidate (former or current) receives compensation from the donee organization before that organization has expended, for purposes unrelated to the candidate's personal benefit, the entire amount donated to it. 11 CFR 113.1(g)(2).

Previous advisory opinions issued by the Commission have considered the application of the Act and Commission regulations to factual situations somewhat similar to your circumstances. For example, in Advisory Opinion 1993-13, former Senator Wyche Fowler proposed to donate the remaining funds of his 1992 Senate campaign to a university that was recognized by the Internal Revenue Service as a qualified 170(c) entity, and the donated funds were to be designated for a student scholarship program. The Commission held that the donation was permitted under the Act. Other opinions have stated the same conclusion. Advisory Opinions 1992-21 and 1985-9. Compare Advisory Opinion 1993-22 in which the Commission concluded that the donation of campaign funds to a private charitable foundation established by a retiring Member of Congress would represent personal use because the donee was not a 170(c) organization and the Member would retain numerous powers to control distribution of the funds, including the power to revoke the underlying trust agreement and use the funds for his personal benefit if he became disabled. The situation you describe is one where the proposed donation of your campaign funds would be made to a qualified 170(c) organization that will not employ or otherwise compensate you or any member of your family, or any member of your official or campaign staffs.

In view of the foregoing, the Commission concludes that the Act and Commission regulations would permit the Hancock committee to donate its remaining campaign funds to TSA.

The Commission notes that the Hancock committee is required to report all disbursements of its campaign funds. 2 U.S.C. 434(b)(4), (b)(5); 11 CFR 104.3(b). The committee's payments to TSA would be reportable as other disbursements. 2 U.S.C. 434(b)(4)(G), 434(b)(6)(A); 11 CFR 104.3(b)(2)(vi) and 104.3(b)(4)(vi).

This response constitutes an advisory opinion concerning the 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)

Lee Ann Elliott
Chairman

Enclosures (AOs 1993-22, 1993-13, 1992-21, and 1985-9)