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FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 9, 2022

ADVISORY OPINION 2022-04

Harry Kresky, Esq.
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128 Binner Road
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Dear Mr. Kresky:

We are responding to your advisory opinion request on behalf of the Jill Stein for President Committee (“Committee” or “requestor”) concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (“FECA”), the Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-42 (the “Public Funding Act”), and Commission regulations to various questions concerning the use of Committee funds raised after the general election in 2016 to pay outstanding administrative fines to the Commission or to make repayments to the United States Treasury. The Commission concludes that (1) the Committee need not establish a separate, segregated account to raise funds designated as “other receipts” to pay administrative fines, (2) the Committee may not use funds designated as primary contributions to pay administrative fines, and (3) the Committee may use funds designated as primary contributions to make repayments to the United States Treasury.

Background¹

The Committee is the principal campaign committee for Dr. Jill Stein, a candidate for the Green Party nomination for president in 2016.² In April 2016, the Commission certified Dr. Stein as eligible for public matching funds from the United States Treasury for the 2016 presidential primary election.³ After the mandatory audit of candidates and

¹ The facts presented in this advisory opinion are based on your letter dated March 14 and email dated April 15, 2022, as well as public disclosure reports filed with the Commission and publicly available audit reports and determinations collected at <https://www.fec.gov/legal-resources/enforcement/audit-reports/publicly-financed-committee-audit-reports/jill-stein-for-president-2016/>.

² Jill Stein for President, Statement of Organization, FEC Form 1 (June 4, 2021), <https://docquery.fec.gov/pdf/401/202106049448814401/202106049448814401.pdf>.

³ Final Audit Report on Jill Stein for President (Apr. 22, 2019) (the “Final Audit Report”) at 3 n.7, https://www.fec.gov/resources/legal-resources/enforcement/audits/2016/Jill_Stein_for_President/

committees receiving public funds for that election, the Commission determined that Dr. Stein and the Committee must repay \$175,272 to the United States Treasury.⁴ Dr. Stein and the Committee have challenged this determination in the United States Court of Appeals for the D.C. Circuit,⁵ and that litigation is pending.⁶ In addition to the repayment determination, the Commission has assessed several administrative fines for the late filing of certain Committee disclosure reports.⁷

The Committee's most recent report filed with the Commission shows cash on hand of \$39,195.95,⁸ which the Committee explains is housed in a bank account at the Summit Credit Union in Madison, Wisconsin.⁹ Although the funds in this account were solicited and accepted after the 2016 general election, the Committee designated them as either (1) "primary contributions" raised "to pay for current legal and administrative costs," or (2) "other receipts" raised to pay administrative fines. According to the request, these funds comply with the Act's source restrictions, amount limitations, and reporting requirements. Further, the Committee states that the funds designated as "other receipts" were raised and reported pursuant to Advisory Opinion 2016-16 (Gary Johnson 2012) at 5 (addressing the reporting of funds raised by a publicly funded committee to pay civil penalties).

The Summit Credit Union account is the Committee's sole active account and contains only funds received by the Committee after the 2016 general election and does not contain any funds transferred from any predecessor account held by the Committee.¹⁰ Although the Committee has already raised contributions and designated them as "other receipts" to pay administrative fines, the Committee is continuing to raise funds and seeks an advisory opinion "as to whether this procedure is satisfactory for the payment of outstanding administrative fines, or if a separate segregated account should be established to receive contributions intended for the payment of these fines."¹¹

[JillStein_FARC_2016.pdf](#). The period during which Dr. Stein was eligible for matching funds ended on August 6, 2016. *Id.* Dr. Stein did not receive public funds for the 2016 general election.

⁴ Repayment Determination After Administrative Review (Sept. 30, 2021), https://www.fec.gov/resources/cms-content/documents/JillStein_SOR_Repayment_Determination_After_Administrative_Review_2016.pdf.

⁵ *Stein v. FEC*, No. 21-1213 (D.C. Cir. Oct. 29, 2021) (Petition for Review of Agency Action), https://www.fec.gov/resources/cms-content/documents/stein_pet_for_rev_of_action_10-29-2021.pdf.

⁶ Documents related to the litigation may be found at <https://www.fec.gov/legal-resources/court-cases/stein-v-fec-21-1213/>.

⁷ See Advisory Opinion Request ("AOR") at AOR001 (listing administrative fines).

⁸ Report of Receipts and Disbursements, FEC Form 3P (Apr. 13, 2022) at 2, <https://docquery.fec.gov/pdf/874/202204139496093874/202204139496093874.pdf>.

⁹ AOR002.

¹⁰ *Id.*

¹¹ AOR001.

Questions Presented

1. *Is the Committee required to establish a separate, segregated bank account to receive funds designated as “other receipts” for the payment of administrative fines?*
2. *May funds designated as primary contributions be used to pay administrative fines?*
3. *May funds designated as primary contributions be used to make repayments to the United States Treasury if the Committee’s legal challenge to the repayment determination is unsuccessful?*

Legal Analysis

1. *Is the Committee required to establish a separate, segregated bank account to receive funds designated as “other receipts” for the payment of administrative fines?*

The Committee is not required to establish a separate, segregated bank account to receive funds designated as “other receipts” for the payment of administrative fines.

As a condition of receiving public funds under the Public Funding Act, a candidate must agree that the “candidate and the candidate’s authorized committee(s) will pay any civil penalties included in a conciliation agreement or otherwise imposed” under the Act.¹² But civil penalties, which include administrative fines, may not be paid from “contributions or matching payments” that the committee received for its publicly financed primary campaign.¹³ The funds received by a publicly funded committee to pay civil penalties are “subject to the prohibitions of the Act” and “shall be reported in accordance with 11 CFR part 104.”¹⁴ Applying that regulation, the Commission, in Advisory Opinion 2016-16 (Gary Johnson 2012) at 5, explained that a committee that received primary election public matching funds may raise funds outside of the Act’s amount limitations to pay civil penalties, as long as they are received from permissible sources and reported as “other receipts” in its regular disclosure reports.

Here, in accordance with Advisory Opinion 2016-16 (Gary Johnson 2012), the Committee has raised funds to pay administrative fines and reported them as “other receipts” on disclosure reports. Nothing in the Act, the Public Funding Act, or the Commission’s regulations require establishing a separate, segregated account for “other

¹² 11 C.F.R. § 9033.1(b)(11).

¹³ *Id.* § 9034.4(b)(4).

¹⁴ *See id.*

receipts.”¹⁵ Therefore, the Committee is not required to establish a separate, segregated fund for “other receipts” raised to pay administrative fines.

2. *May funds designated as primary contributions be used to pay administrative fines?*

No, funds the Committee designated as primary contributions may not be used to pay administrative fines.

As discussed above, civil penalties (including administrative fines) may not be paid from “contributions or matching payments” that the committee received for its publicly financed primary campaign.¹⁶ Here, although you state that the Committee’s sole, active account contains only funds received after the 2016 general election and does not contain any funds transferred from any predecessor account held by the Committee, you nevertheless maintain that these funds were designated as primary election contributions. We note that for a committee to receive primary election contributions after a primary election, it must have net debts outstanding from the primary election on the date received.¹⁷ Nevertheless, accepting your representations as true for the purposes of this opinion both that these contributions were designated as primary election contributions and that the Committee had sufficient net primary debts outstanding to permit it to receive post-primary contributions designated for the primary election,¹⁸ such primary election contributions may not be used to pay administrative fines.

¹⁵ In the context of making repayment determinations, private primary contributions and public funds are, as a matter of law, considered a “commingled pool of federal and private monies.” *Kennedy for President Comm. v. FEC*, 734 F.2d 1558, 1564 (D.C. Cir. 1984); see Public Financing of Presidential Primary and General Election, 56 Fed. Reg. 35,898, 35,905 (July 29, 1991) (explaining that “all funds in a publicly funded committee’s accounts are considered to be commingled”). On the other hand, “other receipts” raised to pay for civil penalties are “not considered contributions or expenditures.” 11 C.F.R. § 9034.4(b)(4). If the Committee chooses not to create a separate, segregated account for “other receipts” used to pay administrative fines, it is reminded to use a reasonable accounting method to ensure proper identification of “other receipts” as opposed to private contributions or public funds. See *id.* § 102.9(a).

¹⁶ *Id.* § 9034.4(b)(4). As discussed above, the “other receipts” received by the Committee are consistent with Advisory Opinion 2016-16 (Gary Johnson 2012) may be used to pay the administrative fines.

¹⁷ 11 C.F.R. § 110.1(b)(3).

¹⁸ You state that the funds designated as primary contributions were raised to pay for “current legal and administrative costs,” which the Commission assumes only includes funds raised to pay net debts outstanding for the 2016 primary election. The Commission notes that “net debts outstanding” includes a limited range of legal and administrative costs under the definition of “net debts outstanding,” which is “debts and obligations incurred with respect to a specific election.” 11 C.F.R. § 110.1(b)(3)(ii). These debts and obligations include repayments to the United States Treasury for a particular election, see Advisory Opinion 2016-16 (Gary Johnson 2012) (explaining that funds raised to make repayments to the United States treasury are “akin to funds raised for debt repayment”), as well as “administrative costs associated with winding down the campaign,” *id.* § 110.1(b)(3)(ii).

3. *May funds designated as primary contributions be used to make repayments to the United States Treasury if the Committee's legal challenge to the repayment determination is unsuccessful?*

Yes, funds the Committee designated as primary contributions may be used to make repayments to the United States Treasury.

The Public Funding Act states that a “candidate shall pay to the Secretary [of the Treasury]” the amount of any public fund overpayments or payments that the candidate used for purposes other than qualified expenses.¹⁹ Commission regulations further specify that such repayments “may be made only from the following sources: personal funds of the candidate . . . , contributions and federal funds in the committee’s account(s), and any additional funds raised subject to the limitations and prohibitions” of the Act.²⁰ Here, the designated primary contributions are contributions, raised subject to the Act’s restrictions, amount limitations, and reporting requirements. Thus, the Committee may use funds designated as primary contributions to make repayments to the United States Treasury.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request.²¹ The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion.²² Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission’s website.

On behalf of the Commission,



Allen J. Dickerson
Chairman

¹⁹ 26 U.S.C. § 9038(b)(1)-(2); *see also* 11 C.F.R. § 9038.2(a)(1).

²⁰ 11 C.F.R. § 9038.2(a)(4).

²¹ *See* 52 U.S.C. § 30108.

²² *See id.* § 30108(c)(1)(B).