



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 20, 1977

AO 1977-14

Dennis J. Whittlesey, Esquire
Casey, Lane & Mittendorf
815 Connecticut Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Whittlesey:

This refers to your letter of March 25, 1977, with enclosure, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a special joint effort committee which would be established to assist several presidential campaign committees in retiring their outstanding campaign debts. You also request an opinion whether the special Committee may participate in a fundraising dinner planned by the Democratic Senatorial and Congressional Campaign Committees and scheduled for May 25, 1977.

With respect to the first part of the request, your letter and enclosure explain that the presidential campaign committees of Birch Bayh, Fred R. Harris, and Sargent Shriver propose to undertake joint fundraising to retire their respective presidential campaign debts. The joint effort would be pursued through a "Special Committee" which would, in fact be an authorized committee of each of the identified former presidential candidates. The Special Committee would, you say, designate its own depository for receiving all contributions and making distributions to the participating campaigns. In addition: "All distributions will be made on an allocation formula, to be agreed upon by participants, which will use outstanding debt figures as a base for determining the appropriate pro rata division."

The Commission concludes that the presidential campaigns mentioned above may authorize the Special Committee to function on their behalf for the purpose of raising funds to retire their respective presidential campaign debts. The Special Committee would be required to be authorized in writing by each of the participating former presidential candidates; each participating campaign will need to designate the Special Committee's depository as one of its depositories. The Special Committee would be subject to all the requirements of the Act and regulations including (but not limited to) the recordkeeping, registration, reporting, and contribution limit provisions.¹

¹ See 2 U.S.C. 432, 433, 434, 441a; see also Parts 102, 103, 104, and 110 of the Commission's regulations (copy enclosed).

All persons making contributions to the Special Committee will be regarded as making a contribution to the participating presidential campaigns; this means that an appropriate accounting system must be utilized to assure compliance with the contribution limits. See 2 U.S.C. 441a(a)(1)(A) and (a)(2)(A). This system must provide for the situation where persons may have already contributed their allowable limit (or less) to one of the participating presidential campaigns and must permit such persons to expressly allocate their contribution between or among those participants as to whom they have not "used up" their 441a(a)(1)(A) or (a)(2)(A) limits. The Commission notes in this regard that prior contributions to the participating campaigns must be taken into account whether made in 1975, 1976, or 1977.² Contributions from individuals are also subject to the carryover, carryback language in 2 U.S.C. 441a(a)(3).³ All solicitations for contributions and other materials (including tickets) which are used by or on behalf of the Special Committee shall include sufficient notice to potential contributors of the applicability of the candidate contribution limits to contributions made to the Special Committee; a method and instructions for allowing contributors to allocate their contributions among the participating presidential campaign shall also be provided.

The general allocation formula, as agreed upon by the participants, may be used to the extent that contributors are not required to make special allocations of their contributions under the circumstances described above. Upon receiving distributions from the Special Committee each participating campaign will also be responsible for assuring that a contribution is not retained if it exceeds the applicable limits of the contributor to whom it is attributable. To facilitate this review, the Special Committee shall transmit with each distribution payment to a participating campaign, a listing of the contributors who are identified with the aggregate amount being remitted.⁴ The participating campaign shall itemize on its reports the contributor information so forwarded to the extent such itemization would be required if the participant received the contribution directly, rather than through the Special Committee.⁵ Each participating campaign should maintain contributor records in the same order that would be required in connection with the submission of claims for matching funds. See 131.2(c)(1) of the regulations.

The distributions of fundraising proceeds by the Special Committee to the participating presidential campaigns are not subject to limit in and of themselves.⁶ However, to avoid the occurrence of a contribution in-kind from one or more of the participating presidential campaigns to another, such participant shall bear a pro-rata share of all fundraising or other expenses of the Special Committee. This share shall be determined on the same basis used for allocating the distribution of funds raised through the joint effort. For example, if the allocation formula allows the Shriver campaign 70 percent of the contributions received by the Special Committee, then that campaign must bear 70 percent of the expenses incurred by or on behalf of the Special Committee to raise those contributions.⁷ Any advance payments required in

² 2 U.S.C. 441a; see 110.1(a)(2) and 110.1(g)(2) of the regulations.

³ See also 110.5 of the regulations.

⁴ See 2 U.S.C. 432(c) and 102.9(a) of the regulations.

⁵ 2 U.S.C. 434(b)(2); see also 104.2(b)(2) of the regulations.

⁶ See 2 U.S.C. 441a(a)(5)(A); see also 110.3(a)(2)(i) and (a)(2)(ii).

⁷ Contributions in the form of ticket purchases to a fundraising dinner or other fundraising event are reportable and subject to limit in their gross amount. See 2 U.S.C. 434(b)(2) and 100.4(a)(2) of the regulations. Of course, 1976

connection with a fundraising event of the Special Committee must also be made by the participating campaigns on the same basis described above; the advance payments may also be made from contributions received by the Special Committee before the May 25 event if those contributions are charged against the relevant limitations of their donors vis-a-vis the participating campaigns.

The second part of your opinion request relates to participation by the Special Committee in a \$500 per ticket fundraising dinner of the Democratic Senatorial and Congressional Campaign Committees. It is proposed that the Special Committee be made a beneficiary of the dinner event; it would:

be issued a block of tickets for this function, which tickets will be sold by and/or for it. All proceeds from the sale of these tickets will be retained by the Special Committee for distribution to its participating campaigns.

Subject to the discussion above regarding part one of your request, the Commission concludes that participation by the Special Committee is permissible. Contributors who purchase tickets from the Special Committee, or from others selling tickets from the Special Committee, or from must be informed of the distribution formula to be utilized and given an option to allocate or designate their ticket purchase/contribution among the participating campaigns of the Special Committee (see preceding discussion on this issue). Furthermore, the Campaign Committees may not bear a disproportionate share of the expenses for the dinner event unless they regard such disproportion as a contribution (subject to limit) to each of the participating presidential campaigns. Similarly, any advance payments for expenses of the event must be shared by the Special Committee and the two Campaign Committees according to the ratio of tickets issued to each Committee. If the expenses and advances are handled in accordance with the foregoing, the Committees will not be regarded as having made contributions to each other.⁸

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)
Vernon W. Thomson
Chairman for the
Federal Election Commission

Enclosure

presidential campaigns subject to limitation under 2 U.S.C. 441a(b)(1)(A) may, for expenditure limitation purposes only, exclude costs to solicit contributions up to the total amount of \$2,182,000. 2 U.S.C. 431(f)(4)(I).

⁸ See 2 U.S.C. 441a(a)(5)(A) and 110.3(a)(2)(i) of the regulations.