

PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS

Members of the public may submit written comments on draft advisory opinions.

DRAFTS A and B of ADVISORY OPINION 2012-06 are now available for comment. They were requested by Salvatore Purpura, on behalf of RickPerry.org, Inc., and are scheduled to be considered by the Commission at its public meeting on March 22, 2012. The meeting will begin at 10:00 a.m. and will be held in the 9th Floor Hearing Room at the Federal Election Commission, 999 E Street, NW, Washington, DC. Individuals who plan to attend the public meeting and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Commission Secretary, at (202) 694-1040, at least 72 hours prior to the meeting date.

If you wish to comment on DRAFTS A and B of ADVISORY OPINION 2012-06, please note the following requirements:

- 1) Comments must be in writing, and they must be both legible and complete.
- 2) Comments must be submitted to the Office of the Commission Secretary by hand delivery or fax ((202) 208-3333), with a duplicate copy submitted to the Office of General Counsel by hand delivery or fax ((202) 219-3923).
- 3) Comments must be received by noon (Eastern Time) on March 21, 2012.
- 4) The Commission will generally not accept comments received after the deadline. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.
- 5) All timely received comments will be made available to the public at the Commission's Public Records Office and will be posted on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

REQUESTOR APPEARANCES BEFORE THE COMMISSION

The Commission has implemented a pilot program to allow advisory opinion requestors, or their counsel, to appear before the Commission to answer questions at the open meeting at which the Commission considers the draft advisory opinion. This program took effect on July 7, 2009.

Under the program:

- 1) A requestor has an automatic right to appear before the Commission if any public draft of the advisory opinion is made available to the requestor or requestor's counsel less than one week before the public meeting at which the advisory opinion request will be considered. Under these circumstances, no advance written notice of intent to appear is required. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2).
- 2) A requestor must provide written notice of intent to appear before the Commission if all public drafts of the advisory opinion are made available to requestor or requestor's counsel at least one week before the public meeting at which the Commission will consider the advisory opinion request. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2). The notice of intent to appear must be received by the Office of the Commission Secretary by hand delivery, email (Secretary@fee.gov), or fax ((202) 208-3333), no later than 48 hours before the scheduled public meeting. Requestors are responsible for ensuring that the Office of the Commission Secretary receives timely notice.
- 3) Requestors or their counsel unable to appear physically at a public meeting may participate by telephone, subject to the Commission's technical capabilities.
- 4) Requestors or their counsel who appear before the Commission may do so only for the limited purpose of addressing questions raised by the Commission at the public meeting. Their appearance does not guarantee that any questions will be asked.

FOR FURTHER INFORMATION

Press inquiries: Judith Ingram
Press Officer
(202) 694-1220

Commission Secretary: Shawn Woodhead Werth
(202) 694-1040

Comment Submission Procedure: Kevin Deeley
Acting Associate General Counsel
(202) 694-1650

Other inquiries:

To obtain copies of documents related to Advisory Opinion 2012-06, contact the Public Records Office at (202) 694-1120 or (800) 424-9530, or visit the Commission's website at <http://saos.nictusa.com/saos/searchao>.

ADDRESSES

Office of the Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Office of General Counsel
ATTN: Kevin Deeley, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

AGENDA DOCUMENT NO. 12-19



FEDERAL ELECTION COMMISSION
Washington, DC 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2012 MAR 20 P 4: 39

March 20, 2012

AGENDA ITEM

MEMORANDUM

TO: The Commission

FROM: Anthony Herman *AH*
General Counsel

Kevin Deeley *KD*
Acting Associate General Counsel

Amy Rothstein *AR*
Assistant General Counsel *TR*

Cheryl Hemsley *CH*
Attorney *TR*

Subject: AO 2012-06 (RickPerry.org, Inc.) Drafts A and B

For Meeting of 3-22-12

SUBMITTED LATE

Attached are proposed drafts of the subject advisory opinion. We have been asked to have these drafts placed on the Open Session agenda for March 22, 2012.

Attachment

1 **ADVISORY OPINION 2012-06**

2 **Mr. Salvatore Purpura**
3 **Treasurer**
4 **RickPerry.org**
5 **P.O. Box 1708**
6 **Austin, TX 78767**

DRAFT A

7
8 **Dear Mr. Purpura:**

9 **We are responding to your advisory opinion request on behalf of RickPerry.org,**
10 **Inc. (the “Committee”), concerning the application of the Federal Election Campaign Act**
11 **of 1971, as amended (the “Act”), and Commission regulations to its proposed conversion**
12 **to a nonconnected committee, use of the Committee’s remaining primary election funds**
13 **by the nonconnected committee, and the redesignation of general election campaign**
14 **funds to the nonconnected committee or to Governor Perry’s State campaign committee.**

15 **The Commission concludes that the Committee may convert to a nonconnected**
16 **committee and use its remaining primary election funds to finance the activities of the**
17 **new nonconnected committee. Alternatively, the Committee may donate its remaining**
18 **primary election funds to Governor Perry’s State campaign committee, subject to State**
19 **law. The Committee, however, may not donate or obtain redesignations of the**
20 **contributions that it received for the general election, and must instead refund those**
21 **contributions to contributors within 35 days after receiving this advisory opinion.**

22 ***Background***

23 **The facts presented in this advisory opinion are based on your letter received on**
24 **February 13, 2012.**

25 **The Committee is Governor Rick Perry’s principal campaign committee for the**
26 **2012 presidential election. Governor Perry sought the Republican Party nomination for**

1 President until January 19, 2012, when he suspended his campaign. Before the
2 suspension, the Committee accepted approximately \$270,000 in contributions designated
3 for the general election. These funds have been maintained in a separate bank account
4 and were not used for primary election expenses. The Committee has not accepted or
5 solicited any contributions since the campaign's suspension on January 19. The
6 Committee has no net debts or obligations outstanding from the primary election
7 campaign.

8 The Committee proposes to transition from a principal campaign committee to a
9 nonconnected committee by amending its Statement of Organization (FEC Form 1) by
10 April 30, 2012. The Committee proposes to use the funds remaining in its primary
11 election account to finance its activities as a nonconnected committee.

12 The Committee also proposes to obtain redesignations of the funds in its general
13 election account for use by the new nonconnected committee. On January 19, the
14 Committee mailed letters to its general election contributors asking them to redesignate
15 their contributions "so that they may remain in the Committee's account and be used for
16 purposes consistent with the Committee's proposed new nonconnected PAC status." The
17 Committee maintains a detailed tracking sheet, updated daily, showing the status of each
18 contribution. As of February 13, the Committee had received redesignation approvals for
19 nearly \$30,000 and refund requests for at least \$100,000 of the general election
20 contributions. The Committee intends to refund all general election contributions for
21 which it has received refund requests by March 19.

22

1 ***Questions Presented***

- 2 1. *May the Committee convert to a nonconnected committee and fund its activities*
3 *with its remaining primary election funds or, alternatively, donate its remaining*
4 *primary election funds to Governor Perry's State campaign committee?*
- 5 2. *May the Committee obtain redesignations of its general election contributions to*
6 *finance its activities as a nonconnected committee?*
- 7 3. *May the Committee obtain redesignations of its general election contributions to*
8 *fund Governor Perry's State campaign committee, to the extent permissible under*
9 *Texas State law?*

10 ***Legal Analysis and Conclusions***

- 11 1. *May the Committee convert to a nonconnected committee and fund its activities*
12 *with its remaining primary election funds or, alternatively, donate its remaining*
13 *primary election funds to Governor Perry's State campaign committee?*

14 Yes, the Committee may convert to a nonconnected committee and fund its
15 activities with its remaining primary election funds or, alternatively, donate its remaining
16 primary election funds to Governor Perry's State campaign committee, subject to State
17 law.

18 The Act and Commission regulations identify six categories of permissible uses
19 of contributions accepted by a Federal candidate, including "for any other lawful
20 purpose." 2 U.S.C. 439a(a)(6); 11 CFR 113.2(e). Such contributions, however, may not
21 be converted to the "personal use" of any person. 2 U.S.C. 439a(b)(1); 11 CFR 113.1(g).
22 "Personal use" is defined as "any use of funds in a campaign account of a present or
23 former candidate to fulfill a commitment, obligations or expense of any person that

1 would exist irrespective of the candidate's campaign or duties as a Federal officeholder.”

2 11 CFR 113.1(g); *see also* 2 U.S.C. 439a(b)(2).

3 The Commission has long interpreted these provisions of the Act and
4 Commission regulations as permitting candidates to convert their authorized committees
5 to nonconnected political committees, and to finance the activities of the nonconnected
6 committees with contributions received by the candidates for elections in which the
7 candidates had participated. *See, e.g.*, Advisory Opinion 1994-31 (Gallo), Advisory
8 Opinion 1993-22 (Roe),¹ Advisory Opinion 1988-41 (Stratton); *cf* Advisory Opinion
9 2004-03 (Dooley for the Valley).²

10 Accordingly, RickPerry.org may convert to a nonconnected committee by
11 amending its Statement of Organization (FEC Form 1) and fund the nonconnected
12 committee's activities using its remaining primary election funds. Should the
13 nonconnected committee wish to qualify as a multicandidate committee, it may count the

14

¹ In Advisory Opinion 1993-22 (Roe), an authorized committee converted to nonconnected status by creating a second committee, and the Commission approved the transfer of pre-conversion campaign funds to the nonconnected committee as a permissible transfer between affiliated committees. The Commission later amended its regulations to prohibit affiliation between authorized committees and entities other than authorized committees, and superseded Advisory Opinion 1993-22 (Roe) “to the extent [it] suggest[s] that an authorized committee can be affiliated with an unauthorized committee.” Explanation and Justification for Final Rules on Leadership PACs, 68 FR 67013, 57018 (Dec. 1, 2003); 11 CFR 100.5(g)(5).

² In Advisory Opinion 2004-03 (Dooley for the Valley), the Commission concluded that certain restrictions on the use of campaign funds by a principal campaign committee remained in place after it had converted to a nonconnected committee. This Advisory Opinion was issued after Congress had amended 2 U.S.C. 439a(a) by removing “any other lawful purpose” as a permissible use of campaign funds. *See* Bipartisan Campaign Reform Act, Pub. L. No. 107-155, 116 Stat. 81 (2002); Explanation and Justification for Final Rules on Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 FR 76962, 76974-75 (Dec. 13, 2002). After Congress added “any other lawful purpose” back to 2 U.S.C. 439a(a), the Advisory Opinion was superseded “to the extent that [it] placed certain limitations on an authorized committee that had converted into a multicandidate committee and its use . . . of funds that had been received when the committee was an authorized committee.” Explanation and Justification for Final Rules on Use of Campaign Funds for Donations to Non-Federal Candidates and Any Other Lawful Purpose Other than Personal Use, 72 FR 56245, 56246 (Oct. 3, 2007); *see also* Consolidated Appropriations Act, Pub. L. No. 108-447, 118 Stat. 2809 (2004).

1 time that the Committee was registered with the Commission, and the number of
2 contributions made and received by the Committee in determining whether it qualifies as
3 a multicandidate committee.³ *See, e.g.,* Advisory Opinion (1993-22) (Roe).

4 The Act and Commission regulations also provide that contributions accepted by
5 a Federal candidate may be donated “to State and local candidates subject to the
6 provisions of State law,” so long as the contributions are not converted to the personal
7 use of any person. 2 U.S.C. 439a(b)(1); 11 CFR 113.1(g). Accordingly, the Committee
8 may, in the alternative, donate its remaining primary election funds to Governor Perry’s
9 State campaign committee, subject to the provisions of Texas law and the personal use
10 prohibition. 2 U.S.C. 439a(a)(5), (b); 11 CFR 113.1(g), 113.2(d), (g); *see also* Advisory
11 Opinion 1993-10 (Colorado); Advisory Opinion 1996-52 (Andrews); Advisory Opinion
12 2007-29 (Jackson Jr.).

13 2. *May the Committee obtain redesignations of its general election contributions to*
14 *finance its activities as a nonconnected committee?*

15 No, the Committee may not obtain redesignations of its general election
16 contributions to finance its activities as a nonconnected committee.

17 The Act’s limitations on contributions to a candidate for a particular election for
18 Federal office “apply separately with respect to each election.” 2 U.S.C. 441a(a)(1)(A),
19 (a)(2)(A), (a)(6). A candidate may nonetheless accept contributions for the general
20 election before winning the primary election or, in the case of a presidential election,
21 before receiving the party’s nomination, if the contributions are designated for use in

³ A committee qualifies as a multicandidate committee when it has been registered with the Commission or Secretary of the Senate for at least six months; has received contributions for Federal elections from more than 50 persons; and (except for any State political party organization) has made contributions to five or more Federal candidates. 2 U.S.C. 441a(a)(4); 11 CFR 100.5(e)(3).

1 connection with the general election. *See* 11 CFR 102.9(e)(1), 110.1(b), 110.2(b). The
2 candidate must employ “an acceptable accounting method to distinguish between
3 contributions received for the primary election and contributions received for the general
4 election.” 11 CFR 102.9(e)(1).

5 There is no separate contribution limit available to contributors with respect to an
6 election in which a candidate does not participate. *See* Advisory Opinion 2003-18
7 (Smith). If the candidate does not become a candidate in the general election (because,
8 for example, the candidate lost the primary election or withdrew before the primary
9 election), all contributions received by the candidate for the general election must
10 therefore be either refunded, redesignated in accordance with 11 CFR 110.1(b)(5) and
11 110.2(b)(5), or reattributed in accordance with 11 CFR 110.1(k), as appropriate. 11 CFR
12 102.9(e)(3); 110.1(b)(3)(i); 110.2(b)(3)(i). Any general election contributions that are not
13 refunded, redesignated, or reattributed would constitute excessive primary election
14 contributions if a committee retained them and/or attempted to use them.

15 Under 11 CFR 110.1(b)(5) and 110.2(b)(5), “the treasurer of an authorized
16 committee may request a written redesignation of a contribution by the contributor for a
17 different election” if the contribution exceeds applicable contribution limits. 11 CFR
18 110.1(b)(5)(i)(A); 110.2(b)(5)(i)(A); *see also* 11 CFR 110.1(b)(5)(i)(C),
19 110.2(b)(5)(i)(C). The Commission established these “procedures to allow political
20 committees to seek and obtain from contributors redesignations . . . of certain
21 contributions that would otherwise be illegal.” Explanation and Justification for Final
22 Rules on Contribution and Expenditure Limitations and Prohibitions; Contributions by
23 Persons and Multicandidate Committees, 52 FR 760 (Jan. 9, 1987). The Commission

1 stated that the redesignation procedure “may be invoked only by *authorized committees*,
2 because other political committees do not receive contributions on a per election basis.”
3 *Id.* at 763 (emphasis added). “[B]y allowing redesignation, the Commission [was]
4 attempting to encourage candidates to pay their campaign debts by eliminating the need
5 to refund impermissible contributions and then solicit contributions for another election.”
6 *Id.*

7 Here, however, the Committee wishes to have its general election contributions
8 redesignated for use by a *nonconnected* committee, rather than by an authorized
9 committee for a different Federal election in which Governor Perry plans to participate.
10 Because a nonnconnected committee is not an authorized committee receiving
11 contributions on a per election basis, any contributions redesignated for its use would not
12 be redesignated for a different election as provided in Commission regulations.
13 Therefore, the Commission concludes that the Committee may not seek to have its
14 general election contributions redesignated for use by the nonconnected committee.

15 3. *May the Committee obtain redesignations of its general election contributions to*
16 *fund Governor Perry’s State campaign committee, to the extent permissible under*
17 *Texas State law?*

18 No, the Committee may not obtain redesignations of its general election
19 contributions to fund Governor Perry’s State campaign committee, nor may it donate the
20 general election funds to the Governor’s State campaign committee.

21 As explained in the answer to Question 2, above, a candidate who has received
22 contributions designated for the general election, but who does not participate in the
23 general election, in certain circumstances, may request redesignations of those

1 contributions for a different election. Commission regulations define “election” as “the
2 process by which individuals . . . seek nomination for election, or election, *to Federal*
3 *office.*” 11 CFR 100.2(a) (emphasis added). *See also* 2 U.S.C. 431(1) (defining
4 “election”); 2 U.S.C. 431(2) (limiting the definition of “candidate” to those seeking
5 “nomination for election, or election, to Federal office”).

6 The Committee here proposes to use its general election contributions to fund
7 Governor Perry’s future campaign for State office, rather than for Federal office. The
8 Committee thus may not obtain redesignations for use by the Governor’s State campaign
9 committee under 11 CFR 110.1(b)(5) and 110.2(b)(5). As the Commission has
10 previously explained, any contributions received during the primary election period that
11 were specifically designated for the general election by a candidate who does not
12 participate in the general election “must not be treated as permissible campaign funds.”
13 Advisory Opinion 2003-18 (Smith).⁴

14 Because the Committee is not entitled to seek redesignations or donate its general
15 election contributions to either the proposed nonconnected committee or to Governor
16 Perry’s State campaign committee, the Commission concludes that it must refund the
17 general election contributions to contributors.

18 Commission regulations require that impermissible funds be refunded within 60
19 days. *See* 11 CFR 110.1(b)(3)(i), (b)(5); 110.2(b)(3)(i), (b)(5); 103.3(b)(3). The
20 Commission has previously concluded that the 60-day period begins to run on the date
21 that the committee “has actual notice of the need to . . . refund the contribution[s],”

⁴ The Committee may not donate the general election contributions to the Governor’s State campaign committee or to the proposed nonconnected committee under 2 U.S.C. 439a(a)(5) and 11 CFR 113.2(d) for the same reason. Advisory Opinion 2003-18 (Smith) (finding that funds “are not usable in accordance with 2 U.S.C. 439a and 11 CFR Part 113”).

1 Advisory Opinion 1992-15 (Russo), which would be the date Governor Perry suspended
2 his presidential campaign here. *See* Advisory Opinion 2008-04 (Dodd for President).
3 The 60-day period for making refunds thus commenced on January 19, 2012, the date
4 Governor Perry suspended his campaign. On February 13, the Committee filed its
5 advisory opinion request, with 35 days remaining in the 60-day period. The Commission
6 concludes that, because of the particular facts and circumstances presented here, the
7 Committee has 35 days (the balance of the 60-day period remaining after the advisory
8 opinion request was filed) after receiving this advisory opinion to refund its general
9 election contributions. *See* Advisory Opinion 1992-15 (Russo); *see also* Advisory
10 Opinion 2008-04 n.3 (Dodd for President) (noting that “[n]ormally, the mere filing of an
11 advisory opinion request does not toll any statutory or regulatory deadlines” and
12 expressing the view of “[s]ome Commissioners” that the 60-day deadline was tolled
13 when that advisory opinion request was filed because of the legal question presented).

14 This response constitutes an advisory opinion concerning the application of the
15 Act and Commission regulations to the specific transaction or activity set forth in your
16 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
17 of the facts or assumptions presented, and such facts or assumptions are material to a
18 conclusion presented in this advisory opinion, then the requestors may not rely on that
19 conclusion as support for its proposed activity. Any person involved in any specific
20 transaction or activity which is indistinguishable in all its material aspects from the
21 transaction or activity with respect to which this advisory opinion is rendered may rely on
22 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or
23 conclusions in this advisory opinion may be affected by subsequent developments in the

1 law including, but not limited to, statutes, regulations, advisory opinions, and case law.

2 The cited advisory opinion is available on the Commission's Web site at, www.fec.gov,

3 or directly from the Commission's Advisory Opinion searchable database at

4 <http://www.fec.gov/searchao>.

5

6

7

8

9

10

11

12

On behalf of the Commission,

Caroline C. Hunter
Chair

1 **ADVISORY OPINION 2012-06**

2 **Mr. Salvatore Purpura**
3 **Treasurer**
4 **RickPerry.org**
5 **P.O. Box 1708**
6 **Austin, TX 78767**

DRAFT B

7

8 **Dear Mr. Purpura:**

9 **We are responding to your advisory opinion request on behalf of RickPerry.org,**
10 **Inc. (the “Committee”), concerning the application of the Federal Election Campaign Act**
11 **of 1971, as amended (the “Act”), and Commission regulations to its proposed conversion**
12 **to a nonconnected committee, use of the Committee’s remaining primary election funds**
13 **by the nonconnected committee, and the redesignation of general election campaign**
14 **funds to the nonconnected committee or to Governor Perry’s State campaign committee.**

15 **The Commission concludes that the Committee may convert to a nonconnected**
16 **committee and use its remaining primary election funds to finance the activities of the**
17 **new nonconnected committee. Alternatively, the Committee may donate its remaining**
18 **primary election funds to Governor Perry’s State campaign committee, subject to State**
19 **law. The Committee also may obtain redesignations of the contributions that it received**
20 **for the general election for use by the new nonconnected committee or Governor Perry’s**
21 **State campaign committee.**

22 ***Background***

23 **The facts presented in this advisory opinion are based on your letter received on**
24 **February 13, 2012.**

25 **The Committee is Governor Rick Perry’s principal campaign committee for the**
26 **2012 presidential election. Governor Perry sought the Republican Party nomination for**

1 President until January 19, 2012, when he suspended his campaign. Before the
2 suspension, the Committee accepted approximately \$270,000 in contributions designated
3 for the general election. These funds have been maintained in a separate bank account
4 and were not used for primary election expenses. The Committee has not accepted or
5 solicited any contributions since the campaign's suspension on January 19. The
6 Committee has no net debts or obligations outstanding from the primary election
7 campaign.

8 The Committee proposes to transition from a principal campaign committee to a
9 nonconnected committee by amending its Statement of Organization (FEC Form 1) by
10 April 30, 2012. The Committee proposes to use the funds remaining in its primary
11 election account to finance its activities as a nonconnected committee.

12 The Committee also proposes to obtain redesignations of the funds in its general
13 election account for use by the new nonconnected committee. On January 19, the
14 Committee mailed letters to its general election contributors asking them to redesignate
15 their contributions "so that they may remain in the Committee's account and be used for
16 purposes consistent with the Committee's proposed new nonconnected PAC status." The
17 Committee maintains a detailed tracking sheet, updated daily, showing the status of each
18 contribution. As of February 13, the Committee had received redesignation approvals for
19 nearly \$30,000 and refund requests for at least \$100,000 of the general election
20 contributions. The Committee intends to refund all general election contributions for
21 which it has received refund requests by March 19.

22

1 ***Questions Presented***

- 2 1. *May the Committee convert to a nonconnected committee and fund its activities*
3 *with its remaining primary election funds or, alternatively, donate its remaining*
4 *primary election funds to Governor Perry's State campaign committee?*
- 5 2. *May the Committee obtain redesignations of its general election contributions to*
6 *finance its activities as a nonconnected committee?*
- 7 3. *May the Committee obtain redesignations of its general election contributions to*
8 *fund Governor Perry's State campaign committee, to the extent permissible under*
9 *Texas State law?*

10 ***Legal Analysis and Conclusions***

- 11 1. *May the Committee convert to a nonconnected committee and fund its activities*
12 *with its remaining primary election funds or, alternatively, donate its remaining*
13 *primary election funds to Governor Perry's State campaign committee?*
- 14 Yes, the Committee may convert to a nonconnected committee and fund its
15 activities with its remaining primary election funds or, alternatively, donate its remaining
16 primary election funds to Governor Perry's State campaign committee, subject to State
17 law.
- 18 The Act and Commission regulations identify six categories of permissible uses
19 of contributions accepted by a Federal candidate, including "for any other lawful
20 purpose." 2 U.S.C. 439a(a)(6); 11 CFR 113.2(e). Such contributions, however, may not
21 be converted to the "personal use" of any person. 2 U.S.C. 439a(b)(1); 11 CFR 113.1(g).
22 "Personal use" is defined as "any use of funds in a campaign account of a present or
23 former candidate to fulfill a commitment, obligations or expense of any person that

1 would exist irrespective of the candidate's campaign or duties as a Federal officeholder.”

2 11 CFR 113.1(g); *see also* 2 U.S.C. 439a(b)(2).

3 The Commission has long interpreted these provisions of the Act and
4 Commission regulations as permitting candidates to convert their authorized committees
5 to nonconnected political committees, and to finance the activities of the nonconnected
6 committees with contributions received by the candidates for elections in which the
7 candidates had participated. *See, e.g.*, Advisory Opinion 1994-31 (Gallo), Advisory
8 Opinion 1993-22 (Roe),¹ Advisory Opinion 1988-41 (Stratton); *cf* Advisory Opinion
9 2004-03 (Dooley for the Valley).²

10 Accordingly, RickPerry.org may convert to a nonconnected committee by
11 amending its Statement of Organization (FEC Form 1) and fund the nonconnected
12 committee's activities using its remaining primary election funds. Should the
13 nonconnected committee wish to qualify as a multicandidate committee, it may count the

¹ In Advisory Opinion 1993-22 (Roe), an authorized committee converted to nonconnected status by creating a second committee, and the Commission approved the transfer of pre-conversion campaign funds to the nonconnected committee as a permissible transfer between affiliated committees. The Commission later amended its regulations to prohibit affiliation between authorized committees and entities other than authorized committees, and superseded Advisory Opinion 1993-22 (Roe) “to the extent [it] suggest[s] that an authorized committee can be affiliated with an unauthorized committee.” Explanation and Justification for Final Rules on Leadership PACs, 68 FR 67013, 67018 (Dec. 1, 2003); 11 CFR 100.5(g)(5).

² In Advisory Opinion 2004-03 (Dooley for the Valley), the Commission concluded that certain restrictions on the use of campaign funds by a principal campaign committee remained in place after it had converted to a nonconnected committee. This Advisory Opinion was issued after Congress had amended 2 U.S.C. 439a(a) by removing “any other lawful purpose” as a permissible use of campaign funds. *See* Bipartisan Campaign Reform Act, Pub. L. No. 107-155, 116 Stat. 81 (2002); Explanation and Justification for Final Rules on Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 FR 76962, 76974-75 (Dec. 13, 2002). After Congress added “any other lawful purpose” back to 2 U.S.C. 439a(a), the Advisory Opinion was superseded “to the extent that [it] placed certain limitations on an authorized committee that had converted into a multicandidate committee and its use . . . of funds that had been received when the committee was an authorized committee.” Explanation and Justification for Final Rules on Use of Campaign Funds for Donations to Non-Federal Candidates and Any Other Lawful Purpose Other than Personal Use, 72 FR 56245, 56246 (Oct. 3, 2007); *see also* Consolidated Appropriations Act, Pub. L. No. 108-447, 118 Stat. 2809 (2004).

1 time that the Committee was registered with the Commission, and the number of
2 contributions made and received by the Committee in determining whether it qualifies as
3 a multicandidate committee.³ *See, e.g.,* Advisory Opinion (1993-22) (Roe).

4 The Act and Commission regulations also provide that contributions accepted by
5 a Federal candidate may be donated “to State and local candidates subject to the
6 provisions of State law,” so long as the contributions are not converted to the personal
7 use of any person. 2 U.S.C. 439a(b)(1); 11 CFR 113.1(g). Accordingly, the Committee
8 may, in the alternative, donate its remaining primary election funds to Governor Perry’s
9 State campaign committee, subject to the provisions of Texas law and the personal use
10 prohibition. 2 U.S.C. 439a(a)(5), (b); 11 CFR 113.1(g), 113.2(d), (g); *see also* Advisory
11 Opinion 1993-10 (Colorado); Advisory Opinion 1996-52 (Andrews); Advisory Opinion
12 2007-29 (Jackson Jr.).

13 2. *May the Committee obtain redesignations of its general election contributions to*
14 *finance its activities as a nonconnected committee?*

15 Yes, the Committee may obtain redesignations of its general election
16 contributions to finance its activities as a nonconnected committee.

17 The Act’s limitations on contributions to a candidate for a particular election for
18 Federal office “apply separately with respect to each election.” 2 U.S.C. 441a(a)(1)(A),
19 (a)(2)(A), (a)(6). A candidate nonetheless may accept contributions for the general
20 election before winning the primary election or, in the case of a presidential election,
21 before receiving the party’s nomination, if the contributions are designated for use in

³ A committee qualifies as a multicandidate committee when it has been registered with the Commission or Secretary of the Senate for at least six months; has received contributions for Federal elections from more than 50 persons; and (except for any State political party organization) has made contributions to five or more Federal candidates. 2 U.S.C. 441a(a)(4); 11 CFR 100.5(e)(3).

1 connection with the general election. *See* 11 CFR 102.9(e)(1), 110.1(b), 110.2(b). The
2 candidate must employ “an acceptable accounting method to distinguish between
3 contributions received for the primary election and contributions received for the general
4 election.” 11 CFR 102.9(e)(1).

5 There is no separate contribution limit available to contributors with respect to an
6 election in which a candidate does not participate. *See* Advisory Opinion 2003-18
7 (Smith). If a candidate subsequently does not participate in the general election (because,
8 for example, the candidate lost the primary election or withdrew before the primary
9 election), all contributions received by the candidate for the general election must
10 therefore be either refunded, redesignated in accordance with 11 CFR 110.1(b)(5) and
11 110.2(b)(5), or reattributed in accordance with 11 CFR 110.1(k), as appropriate. 11 CFR
12 102.9(e)(3), 110.1(b)(3)(i), 110.2(b)(3)(i). Any general election contributions that are not
13 refunded, redesignated, or reattributed would constitute excessive primary election
14 contributions if a committee retained them and/or attempted to use them.

15 Under 11 CFR 110.1(b)(5) and 110.2(b)(5), “the treasurer of an authorized
16 committee may request a written redesignation of a contribution by the contributor for a
17 different election” if the contribution exceeds applicable contribution limits. 11 CFR
18 110.1(b)(5)(i)(A); 110.2(b)(5)(i)(A); *see also* 11 CFR 110.1(b)(5)(i)(C),
19 110.2(b)(5)(i)(C). The Commission established these “procedures to allow political
20 committees to seek and obtain from contributors redesignations . . . of certain
21 contributions that would otherwise be illegal.” Explanation and Justification for Final
22 Rules on Contribution and Expenditure Limitations and Prohibitions; Contributions by
23 Persons and Multicandidate Committees (“E&J”), 52 FR 760 (Jan. 9, 1987).

1 Here, the Committee wishes to have its general election contributions
2 redesignated for its use after it converts to a nonconnected committee. In the past, the
3 Commission has indicated that the redesignation procedure “may be invoked only by
4 *authorized* committees, because other political committees do not receive contributions
5 on a per election basis.” E&J at 763 (emphasis added); *cf.* Advisory Opinion 2003-18
6 (Smith) (donation to charitable foundation impermissible because general election funds
7 “must not be treated as permissible campaign funds”). The rationale for permitting such
8 redesignations also applies, however, to nonconnected committees that have converted
9 from authorized committees.

10 Redesignated general election funds are treated as if they had been given, in fact,
11 for a different election (past or future), thereby preventing them from being considered
12 excessive contributions for the candidate's recent primary election. Over the course of an
13 election cycle, contributors can generally give greater amounts of money to a
14 nonconnected committee than to an individual authorized committee.⁴ Like
15 redesignating general election funds to a different election (for which there is a new
16 contribution limit), allowing the redesignation of general election funds to a
17 nonconnected committee (which also has a distinct contribution limit under the Act) does
18 not lead to an excessive contribution because the funds now count towards a different
19 contribution limit, albeit one based on a calendar year rather than a per-election basis.

⁴ An individual may contribute up to \$2500 to a candidate committee per election and up to \$5000 per calendar year to a nonconnected committee. 2 U.S.C. 441a(a)(1)(A), (a)(1)(C); 11 CFR 110.1(b), (d); 76 FR 8368-01 (Feb. 14, 2011). A multicandidate political committee could have contributed up to \$5,000 per election to a candidate committee and \$5,000 per calendar year to a nonconnected committee (\$10,000 total over the course of a two-year election cycle to both candidate committees and nonconnected committees, and even more to a nonconnected committee over the course of a four- or six-year election cycle). 2 U.S.C. 441a(a)(2)(A), (a)(2)(C); 11 CFR 110.2(b), (d).

1 Just as a new election creates a new individual contribution limit for that upcoming
2 election, the creation of a new nonconnected committee here gives rise to a different
3 contribution limit. Because contributors to the Committee's general election account
4 could contribute those same amounts after it has converted to a nonconnected committee,
5 it would make little sense to force the Committee to refund all the general election funds
6 and then resolicit them. For this reason, we now interpret the Act to permit redesignation
7 not only to another election for an authorized committee, but also to a nonconnected
8 committee that has been converted from a redesignating authorized committee.

9 This result is consistent with the Commission's longstanding determination that a
10 nonconnected committee that has converted from an authorized committee may count the
11 time that the authorized committee had been registered with the Commission, and the
12 number of contributions made and received by the authorized committee, in determining
13 whether it qualifies as a multicandidate committee. *See supra* n.3. In both instances, the
14 nonconnected committee serves as a continuation of the authorized committee, albeit one
15 subject to a different set of regulatory requirements and prohibitions.

16 Accordingly, the Committee may obtain redesignations of its general election
17 funds for use by the nonconnected committee into which it will convert. Any
18 contributions so redesignated would be considered contributions to the nonconnected
19 committee from the original contributor of the funds, and as such must be aggregated
20 with the contributor's other contributions to the nonconnected committee within the same

1 calendar year.⁵ The aggregate of contributions from an individual, for example, generally
2 may not exceed \$5,000 per calendar year to a nonconnected committee, although there is
3 no dollar limit on contributions to political committees making only independent
4 expenditures. *See* 11 CFR 110.1(b)(5)(iii), 110.2(b)(5)(iii), 110.1(d), 110.2(d); Advisory
5 Opinion 2010-11 (Commonsense Ten).

6 3. *May the Committee obtain redesignations of its general election contributions to*
7 *fund Governor Perry's State campaign committee, to the extent permissible under*
8 *Texas State law?*

9 Yes, the Committee may obtain redesignations of its general election
10 contributions to fund Governor Perry's State campaign committee to the extent
11 permissible under Texas State law.

12 As explained in the answer to Question 2, above, contributions received for a
13 general election in which the candidate does not participate must be refunded,
14 redesignated or reattributed. *See* 11 CFR 102.9(e)(3), 110.1(b)(3)(i), 110.2(b)(3)(i). The
15 purpose of the redesignation procedure is to allow candidates to use in another election
16 funds that would otherwise be excessive without having to refund and resolicit them.

17 Here, the requestor proposes to ask contributors to redesignate general election
18 contributions for use by Governor Perry's State campaign committee. The contributions
19 would be explicitly redesignated by the contributors. Redesignations to a future election
20 for a federal campaign committee are permissible. *See* Advisory Opinion 2008-04
21 (Dodd). There is no requirement under the Act and Commission regulations or other

⁵ Since any redesignations the Committee obtains pursuant to this advisory opinion would be obtained in the current calendar year, the contributions would count towards the contributor's applicable limits for the current calendar year.

1 reason to treat differently redesignation to a former candidate's campaign committee for a
2 future State election.

3 The Committee thus may obtain redesignations of its general election funds for
4 use by Governor Perry's State campaign committee, to the extent permissible under
5 Texas State law. Any general election funds not redesignated must be refunded to the
6 contributors.⁶

7 Commission regulations require that impermissible funds be refunded, or
8 redesignations be obtained, within 60 days. *See* 16 CFR 110.1(b)(3)(i), (b)(5);
9 110.2(b)(3)(i), (b)(5); 103.3(b)(3). The Commission has previously concluded that the
10 60-day period begins to run on the date that the committee "has actual notice of the need
11 to . . . refund the contribution[s]," Advisory Opinion 1992-15 (Russo), which would be
12 the date Governor Perry suspended his presidential campaign here. *See* Advisory
13 Opinion 2008-04 (Dodd for President). The 60-day period for obtaining redesignations
14 and making refunds commenced on January 19, 2012, the date Governor Perry suspended
15 his campaign. On that date, the Committee sent letters requesting redesignations of the
16 general election contributions to the nonconnected committee. The 60-day deadline for
17 receiving such redesignations and providing refunds was March 19.

18 On February 13, the Committee filed its advisory opinion request, with 35 days
19 remaining in the 60-day period. The Commission concludes that, because of the
20 particular facts and circumstances presented here, the Committee has 35 days (the
21 balance of the 60-day period remaining after the advisory opinion request was filed) after

⁶ Because the funds raised under these circumstances for the general election may not be used until they are properly redesignated or refunded, the costs associated with obtaining redesignations and issuing refunds may not be paid by using the general election funds.

1 receiving this advisory opinion to obtain redesignations of general funds to Governor
2 Perry's State campaign committee and must refund any general election contributions for
3 which it does not receive written redesignations to either the nonconnected committee or
4 to Governor Perry's State campaign committee. *See* Advisory Opinion 1992-15 (Russo);
5 *see also* Advisory Opinion 2008-04 n.3 (Dodd for President) (noting that "[n]ormally, the
6 mere filing of an advisory opinion request does not toll any statutory or regulatory
7 deadlines" and expressing the view of "[s]ome Commissioners" that the 60-day deadline
8 was tolled when that advisory opinion request was filed because of the legal question
9 presented).

10 This response constitutes an advisory opinion concerning the application of the
11 Act and Commission regulations to the specific transaction or activity set forth in your
12 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
13 of the facts or assumptions presented, and such facts or assumptions are material to a
14 conclusion presented in this advisory opinion, then the requestors may not rely on that
15 conclusion as support for its proposed activity. Any person involved in any specific
16 transaction or activity which is indistinguishable in all its material aspects from the
17 transaction or activity with respect to which this advisory opinion is rendered may rely on
18 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or
19 conclusions in this advisory opinion may be affected by subsequent developments in the
20 law including, but not limited to, statutes, regulations, advisory opinions, and case law.

21

1 The cited advisory opinion is available on the Commission's Web site at,
2 www.fec.gov, or directly from the Commission's Advisory Opinion searchable database
3 at <http://www.fec.gov/searchao>.

4
5
6
7
8
9
10
11
12

On behalf of the Commission,

Caroline C. Hunter
Chair