FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, DC 20463

December 9, 1976

Re: AOR 1976-101

Ms. Virginia T. Heise
Controller
Moynihan for Senate
355 Lexington Avenue
New or, New York 10017

Dear Ms. Heise:

This is in response to your letter of November 10, 1976, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to campaign debts and transition costs.

You state that the Moynihan for Senate Committee ("the Committee") has debts from both the primary and the general election. The Committee is now in the process of raising funds to pay off these debts, and you ask what funds can be used to pay these obligations.

As you are aware, the Act provides that no person shall make contributions to any candidate and his or her authorized political committees with respect to any Federal election which in the aggregate exceed $1,000 or $5,000 if a multicandidate committee. 2 .U.S.C. §441a(a)(1)(A) and (2)(A). There is a separate $1,000 or $5,000 limit for the primary and the general election. These limitations also apply to contributions made to retire debts resulting from a primary or general election occurring in 1976. §110.1(g)(2) of the Commission's proposed regulations. A person who has not already contributed the applicable limit for the primary may now contribute up to that amount to retire the primary debts, but only to the extent that the amount contributed does not exceed net debts outstanding from that election. §110.1(a)(2)(i) of the Commission's proposed regulations. Similarly, a person may contribute with respect to the general election debt, if the $1,000 or $5,000 limit is not exceeded but only to the extent of net debts outstanding from the general election. You can see, the, that the Committee's debt must be separated into primary and general election obligations, for purposes of applying the contribution limits to post-general election contributions to retire such debts.

The contributors should designate, in writing, the specific election debt to which their contribution relates. They need not earmark the contribution for specific amounts owed to particular creditors. If the contributor makes no designation as to what election debt the funds should be applied, then the contribution shall be deemed to be made with respect to the general election, and must not exceed the $1,000 or $5,000 limit when aggregated with prior contributions made with respect to the general election. Finally, any funds contributed with respect to the general election may be used to retire any debts since, for use purposes, the general election campaign is deemed to have assumed the debts from the primary.

Your second question relates to what you term "transition costs." You state that the Committee needs "staff, headquarters, and supplies in order to file Federal Election Commission reports, close the campaign and handle correspondence, schedules, etc., which are the natural results of a victory." You ask whether campaign funds may be used to pay for these enumerated expenses since the Senator-elect will not receive legislatively appropriated funds for staff expenses until January 3, 1977.

It is appropriate to use campaign funds for the costs you describe. However, the Commission points out that the Committee has a primary duty to make every reasonable effort to retire debts incurred prior to the election, and the Committee must continue to report all debts and obligations until they are extinguished, §104.8(a). Use of campaign funds now on hand to defray "transition costs" may compromise the Committee's ability to establish the reasonableness of its efforts to retire outstanding debts if the Committee at some future time wants to settle a debt for less than the amount owed on such debt. Any settlement of debts with corporate creditors is subject to review by the Commission, see §114.10.

We also note that the Senator-elect is already an "officeholder" for purposes of setting up an office account. See 2 U.S.C. §439(a) and Part 113. He may, therefore, accept funds which are donated for the purpose of supporting his activities in carrying out duties as a holder of Federal office. A distinction must be made in this transition period between "contributions" which are made with respect to the past election and donations to an office account. In view of the Committee's duty to retire debts, as noted above, the Commission recommends that only such "excess campaign funds" as remain after all campaign debts are extinguished be used to defray expenses incurred in connection with holding (or assuming) Federal office. And no funds donated for officeholder expenses may be used to pay election debts unless the contributor agrees and the contribution is charged against the applicable limits of 2 U.S.C. §441a(a).

This response relates to your opinion request but may be regarded as informational only and not as an advisory opinion since it is based in part on proposed regulations of the Commission. These proposed regulations were formally adopted by the Commission and serve as interpretative rules of the Commission as to the meaning of pertinent statutory language. The proposed rules were transmitted to the Congress on August 3, 1976. See 2 U.S.C. §438(c). For your information I enclose a copy of a recent Commission policy statement regarding those rules.

Sincerely yours,

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

Enclosure [10/5/76 policy statement]