FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 27, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-5

Mr. Donald J. Messaglia, Treasurer
Barnes for Congress Committee
Box 7015
South Bend, Indiana 46634

Dear Mr. Messaglia:

This responds to your letter of January 18, 1986, requesting an advisory opinion on behalf of the Barnes for Congress Committee concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the transfer of funds from a congressional campaign committee to a local campaign committee.

You state that the Barnes for Congress Committee, the principal campaign committee of Michael P. Barnes of Indiana ("the Committee") in the 1984 election cycle, plans to terminate in the very near future. You ask whether it would be permissible for the Committee to transfer funds accumulated during the 1984 election campaign to the local Barnes for St. Joseph County Prosecutor Committee.

Under the Act and Commission regulations, excess campaign funds may be used for a variety of specific purposes that are expressly made lawful: the funds may be used to defray any ordinary and necessary expenses incurred in connection with a candidate's duties as a Federal officeholder; they may be contributed to any organization that is exempt from Federal taxation under 26 U.S.C. 170(c); they may be contributed without limitation to any national, State, or local committee of a political party; or they may be used for "any other lawful purpose." Such funds may not be converted by any person to any personal use if the candidate involved was not a Member of Congress on January 8, 1980. See 2 U.S.C. 439a and 11 CFR 113.2; see also Advisory Opinion 1980-113.

The Commission concludes that so long as the proposed transfer of funds from the Federal campaign committee to the local campaign committee is permissible under Indiana law,

and assuming any funds so transferred are in fact used in the candidate's local election campaign and not diverted to the candidate's personal use, such a transfer would be permissible under 2 U.S.C. 439a. See Advisory Opinions 1980-113 and 1983-27. If, following this transfer, the Committee wishes to terminate its reporting status, it may do so by filing a Termination Report on FEC Form 3 or by filing a written statement containing the same information, provided it has met all the requirements of 11 CFR 102.3(a). The Termination Report must disclose the disposition of all residual funds. 11 CFR 102.3(a).

Finally, the Commission emphasizes that if any provisions of Indiana law are applicable to the proposed transfer, such provisions would not be preempted by 2 U.S.C. 453 and 11 CFR 108.7. Thus, the application of any Indiana law concerning, for example, the amount of such a transfer or the reporting of it by the transferee committee would not be superseded or preempted by the Act or regulations of the Commission. See Advisory Opinions 1979-82, 1978-94, and 1978-37.

The Commission expresses no opinion as to the possible tax ramifications of the proposed transaction, because that issue is not within its jurisdiction.

This response constitutes an advisory opinion concerning 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 yours,

(signed)

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures (AOs 1983-27, 1980-113, 1979-82, 1978-94, 1978-37)