



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 19, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-18

Honorable Tom Bevill
3827 North Military Road
Arlington, Virginia 22207

Dear Representative Bevill:

This responds to your letter of May 15, 1986, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed transfer of funds from your principal campaign committee, Friends of Tom Bevill ("the committee"), into a Merrill Lynch Cash Management Account (CMA).

You state that currently most of the funds that you propose to transfer are deposited in several banks and savings and loans, in six-month certificates of deposit. You add that you are planning to transfer some of these funds to a Merrill Lynch CMA in order to gain more flexibility in the amount of interest earned and to have the funds more readily available for campaign expenses. A portion of the funds so transferred would remain in a cash deposit within the account and a portion would be invested in a fund composed of U.S. Government obligations. You state that the Cash Management Account would furnish the committee with a charge card, enabling the committee to charge campaign expenses directly against the account. You ask whether it is permissible for the committee to transfer campaign funds into the CMA for investment purposes, and whether the charge card provided by the CMA may be used as a mechanism for making campaign expenditures.

According to publicly available information describing the Merrill Lynch Cash Management Account program, a CMA account may be opened by placing \$20,000 or more in any combination of cash and/or securities in the CMA brokerage account. Any idle cash generated in the account is automatically invested in any of three no-load (i.e., no transaction fee

is charged) CMA money market funds¹, including the CMA Government Securities Fund, or deposited through the Insured Savings Account Program, which includes individual, federally-insured money market deposit accounts with designated depository institutions.

The CMA financial service offers investors two methods of gaining access to their assets: (1) a Visa card provided by Merrill Lynch Bank and Trust Company, and (2) check writing services, provided by a bank.² The bank notifies Merrill Lynch daily of any charges that are presented against the Visa Account, whether by use of the Visa card or checks. Merrill Lynch makes payment to the bank on behalf of its customers from their CMA accounts on the day notice of the debit is received by Merrill Lynch. CMA customers receive a monthly transaction statement detailing all CMA account transactions during the preceding month.

In light of these facts, the Commission concludes that the committee would be permitted to transfer campaign funds into the Cash Management Account, but only for investment purposes. Commission regulations state that such transfers are permissible, provided that the funds transferred (and any accrued interest or dividends paid) are returned to the campaign depository before they are used to make any disbursements. 11 CFR 103.3(a) and see 2 U.S.C. 432(h)(1). See also Advisory Opinion 1980-39. In addition, any interest, dividends, or other earnings on CMA investments are required to be reported; itemized information must be disclosed if the aggregate of such receipts from the same payor exceeds \$200 within the calendar year. 2 U.S.C. 434(b)(3)(G), 11 CFR 104.3(a)(4)(vi).

With respect to your second question, however, the Commission concludes that the committee would not be permitted to use the Visa card provided by the Cash Management Account as a means of making campaign expenditures. Under the Act, a political committee must designate "one or more State banks, federally chartered depository institutions, or depository institutions the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, as its campaign depository or depositories." 2 U.S.C. 432(h)(1).³ Furthermore, all committee disbursements (other than petty cash disbursements of \$100 or less to any person in connection with a single purchase or transaction) must be made by check or similar draft drawn on an account at its designated campaign depository. 2 U.S.C. 432(h)(1) and 11 CFR 103.3(a). Because the Cash Management Account is not a checking account, and because the use of the CMA credit card results in a direct debit to a CMA account instead of requiring a disbursement by check (or similar instrument) drawn on an account at one of the types of depository institutions listed in 11 CFR 103.3(a) and 2 U.S.C. 432(h)(1), the proposed use of the Visa card is impermissible.

¹ These money market fund shares are not subject to protection by the Securities Investor Protection Corporation; nor are the shares protected by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or any other government insurance agency.

² The materials describing the CMA program state that Merrill Lynch, Pierce, Fenner & Smith, Inc., is not a bank and does not represent itself to be one.

³ The Commission notes that the Act specifically identifies the qualified insurers of political committee funds held by depository institutions. See Advisory Opinion 1984-6. This opinion also summarizes the changes made in the categories of campaign depository institutions specified by the Act. It is significant that brokerage accounts and related financial services offered in conjunction with those accounts are not mentioned.

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 1984-6 and 1980-39)

cc: Friends of Tom Bevill
Dick Wright, Treasurer
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