



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 12, 1987

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-11

George J. Kubat, Treasurer
Committee to Re-Elect Senator Zorinsky
600 Woodmen Tower
Omaha, Nebraska 68102

Dear Mr. Kubat:

This responds to your letters of April 20 and May 8, 1987, requesting an advisory opinion on behalf of the Committee to Re-Elect Senator Zorinsky ("the Zorinsky Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the disposition of excess campaign funds.

Your letters state that the Zorinsky Committee was the principal campaign committee of the late Senator Edward Zorinsky for the 1988 Nebraska Senatorial primary election. Approximately \$180,000 in excess campaign funds remains in the Zorinsky Committee's treasury. You enumerate nine alternatives being considered by the Zorinsky Committee for the disposition of those funds. The nine alternatives are as follows:

1. Transfer all excess campaign funds to Senator Zorinsky's widow;
2. Transfer all excess funds to a trust for the benefit of Senator Zorinsky's widow;
3. Use excess campaign funds to create a charitable foundation administered by Senator Zorinsky's widow or other qualified people;
4. Use excess campaign funds to create a state political action committee to support or oppose ballot issues and to support candidates for state and Federal offices;
5. Transfer excess campaign funds to members of Senator Zorinsky's family;

6. Transfer excess campaign funds to various charitable organizations;
7. Transfer excess campaign funds to local or national political committees such as the state and national Democratic or Republican committees;
8. Refund contributions made for the 1988 Nebraska Senatorial primary to the original donors; and
9. Use excess campaign funds to defray costs (not covered by the official Senate allocation) incurred by Senator Zorinsky's widow in closing the Senator's Washington, D.C. office and moving back to Nebraska.

The Zorinsky Committee may distribute its excess funds for any of the nine proposed purposes subject to the limitations discussed below.

The Act provides that excess campaign funds may be: used by an individual or candidate to defray ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office; donated to qualified charitable organizations; transferred without limit to any national, state or local political party committee; or used for "any other lawful purpose" except that with respect to any individual who was not a Senator or Representative in Congress on January 8, 1980, no such amount may be converted by any person for any personal use. 2 U.S.C. 439a, 11 CFR 113.2.

In the absence of any applicable State or Federal law outside the Commission's jurisdiction, which would preclude these uses, the Zorinsky Committee may: transfer the excess funds to the Senator's wife; transfer the excess funds to a trust for the benefit of Mrs. Zorinsky; create a charitable foundation administered by Senator Zorinsky's widow or other qualified people; and transfer excess funds to the Zorinsky family. All of these proposals (alternatives one, two, three, and five) for the use of the excess campaign funds constitute a permissible use of campaign funds insofar as the Act is concerned, and would not be subject to the contribution limits of the Act or regulations. See Advisory Opinions 1981-15, 1980-41, and 1978-94.

Since Mr. Zorinsky was a member of the U.S. Senate on January 8, 1980, the distribution of excess campaign funds for any "personal use" would not be prohibited by 2 U.S.C. 439a or 11 CFR 113.2. Such personal uses may be subject to State law because the Act and regulations do not make personal uses a "lawful purpose." The Commission does not, however, reach any conclusion with respect to application of State law to any personal use of the excess campaign funds.

The sixth and seventh alternatives, a transfer of the excess campaign funds to various charitable organizations or to local or national political party committees, are expressly made lawful and are exempt from limits under 2 U.S.C. 439a. See also 11 CFR 113.2(b) and (c). Similarly, the ninth alternative, payment of expenses to close the late Senator's office and move his widow from Washington, D.C. to Nebraska, are specifically permitted under the Act because they constitute ordinary and necessary expenses in connection with the duties of a Federal

officeholder. See 11 CFR 113.2(a). Expenses to wind down and close the late Senator's office are incident to the conclusion of officeholder activities conducted on his behalf after his death. The expenses of moving his widow back to Nebraska are an officeholder transition expense incurred in connection with the cessation of the late Senator's status as a Federal officeholder. See Advisory Opinion 1980-138. The eighth alternative--contribution refunds--would also be viewed by the Commission as explicitly made lawful since the reporting provisions of the Act anticipate the making of such refunds in the discretion of the donee committee. See 2 U.S.C. 434(b)(4)(F) and (b)(5)(E).

Alternatives six, seven, eight, and nine would also be exempt from any regulation under state law because they are expressly made lawful by the Act and regulations. The Act supersedes the application of state law as to such uses. 2 U.S.C. 453, 11 CFR 108.7

The fourth alternative, while permissible under the Act, would be subject to the contribution limits if the Zorinsky Committee makes a contribution to any political committee which is defined to include any committee that receives or makes contributions (or that makes expenditures) for the purpose of influencing any Federal election in an aggregate amount exceeding \$1,000 during a calendar year. 2 U.S.C. 431(4)(A), (8)(A), (9)(A). Under those circumstances, the political committee would be limited to receiving \$5,000 per calendar year from the Zorinsky Committee.* 2 U.S.C. 441a(a)(1)(C), 11 CFR 110.1(c). If, on the other hand, the donee committee is not a "political committee," as defined by the Act, the contribution limits of the Act would not apply.

The Zorinsky Committee is required to report all disbursements of its excess campaign funds. 2 U.S.C. 434(b)(4), (b)(5) and 11 CFR 104.3(b). Payments to Mr. Zorinsky's widow, a trust, a charitable foundation, family members, various charitable organizations, local or national political party committees, to close the Senator's Washington office, and to move his widow back to Nebraska, as well as payments to a state political action committee supporting state and Federal candidates, are reportable as other disbursements. See 2 U.S.C. 434(b)(4)(G) and (b)(6)(A), 11 CFR 104.3(b)(2)(vi) and (b)(4)(vi). Refunds to primary election contributors are reportable as offsets. See 2 U.S.C. 434(b)(4)(F) and (b)(5)(E), 11 CFR 104.3(b)(2)(v) and (b)(4)(v).

The Commission expresses no opinion regarding possible application of Senate rules to the described transactions, nor as to any Federal tax or other ramifications, since those issues are outside the Commission's 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,

(signed)

Scott E. Thomas

Chairman for the Federal Election Commission

*/ The Commission has previously recognized that a principal campaign committee may convert to a multicandidate political committee by amending its Statement of Organization to redesignate it as a nonconnected political committee. Such a conversion has been viewed by the Commission as a permissible use of excess campaign funds under 2 U.S.C. 439a and 11 CFR 113.1(e). See Advisory Opinions 1985-30 and 1983-14.