



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 13, 1987

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-16

Mr. Daniel A. Taylor
Hill & Barlow
One International Place
Boston, Massachusetts 02110

Dear Mr. Taylor:

This responds to your letters of April 13 and May 21, 1987, on behalf of the Dukakis for President Committee, Inc., concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the transfer of certain assets from a state campaign committee to a Federal campaign committee.

You state that the Dukakis Gubernatorial Committee ("the state committee") is in possession of certain assets that it wishes to transfer¹ to the Dukakis for President Committee, Inc. ("the Federal committee"). These assets consist of six computer terminals and two printers. These items were purchased between October 1983 and April 1986. You state that the total purchase price of these items was \$24,661, and that you now estimate their value at \$9,700. In addition to these items, the state committee also proposes transferring contributor and supporter lists to the Federal committee. You state that the combined fair market value of these lists is \$4,000. You state that in exchange for and as consideration for the state committee's names, the Federal committee will undertake to provide the state committee with an equal number of names of supporters and contributors. You ask whether the transfer of these assets, in the manner described, is permissible under the Act and Commission regulations, and if so, how the transaction should be reported.

The Commission concludes that the proposed transfer of computer equipment from the state committee to the Federal committee is permissible under the Act. Because the computer equipment represents something of value as defined at 11 CFR 100.7(a)(1)(iii)(A), the proposed transfer would be viewed as a contribution in-kind to the Federal committee. The Commission notes that the proposed transfer would not be subject to the Act's limitations on contributions set

forth at 2 U.S.C. 441a(a)(1). Commission regulations provide that transfers of funds may be made without limit between "affiliated" committees. 11 CFR 102.6(a). Included within the definition of affiliated committees are all those political committees that are established, financed, maintained, or controlled by the same person or group of persons. See 11 CFR 100.5(g)(2), 110.3(a)(1)(i); 2 U.S.C. 441a(a)(5); see also Advisory Opinions 1987-12 and 1982-52. The state committee would be regarded as affiliated with the Federal committee for the purpose of making the proposed transfer, which would not be subject to limitation.

According to the representations in your request, the state committee purchased the equipment between 1983 and 1986 with funds it had received pursuant to Massachusetts state law, which prohibits corporate contributions and limits individual contributions to \$1,000. You further note that, although apparently permitted by State law, the state committee had a "policy ... not to accept so called PAC contributions" or any contributions from labor organizations.² The Commission's approval of the transfer of the described equipment, therefore, is conditioned on its understanding from these representations that the transfer would not represent an indirect infusion of prohibited funds into a Federal election campaign. The Commission has previously concluded that where campaign items were purchased originally for a state campaign with the personal funds of the then state candidate, but not used in their entirety, the remainder could be transferred to the individual's principal campaign committee for Federal office because they were purchased with funds lawful under the Act. Advisory Opinion 1980-14. In a different, but somewhat related context, the Commission has also treated transfers of excess assets of a principal campaign committee the same as transfers of its excess funds.³ See Advisory Opinion 1984-50.

The Commission also concludes that the proposed transfer of contributor and supporter lists to the Federal committee in the circumstances presented here⁴ is permissible, and that no exchange of lists between the committees is required. The transaction would be viewed as a transfer of assets similar to the transfer of computer equipment described above, and the same qualification stated regarding the sources of state committee funds is relevant to the list transfer. The Commission reserves and does not reach the question as to whether the "exchange" you propose represents an exchange of names of equal value, or is adequate consideration from the Federal committee. See Advisory Opinion 1982-41.

The proposed transfers of the computer equipment and the contributor lists should be reported by the Federal committee as the receipt of an in kind contribution from the state committee and as a corresponding expenditure by the Federal committee. The expenditure reporting schedule (Schedule B) should give a brief description of the items comprising the in kind contribution. 11 CFR 104.13(a); see generally 11 CFR 104.3(a) and (b). The state committee would not be required to report these transactions because they are not funds transferred under 11 CFR 104.12 and because, in these circumstances, they do not represent indirect contributions of items purchased by the state committee with funds that would be prohibited or excessive under the Act. In this situation the state committee has demonstrated that it received sufficient funds in compliance with the Act to purchase the equipment and develop the contributor lists. See 11 CFR 102.5(b)(1)(ii).

The Commission expresses no opinion concerning the application of any Massachusetts statute or regulations that may govern the proposed transfers of assets.

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 of the Federal Election Commission

Enclosures (AOs 1987-12, 1984-50, 1982-52, 1982-52, 1982-41, and 1980-14)

1/ The documents accompanying your request indicate that the state committee registered with the Commission as a political committee on or about April 6, 1987. Documents with your request also disclose that as of April 6, 1987, the state committee had transferred \$380,000 to the Federal committee and had \$56,109.45 cash on hand, with liabilities totaling \$7,961.97. This transfer is, of course, subject to Commission regulations requiring review, reporting, and possible exclusion of certain contributions received into the state committee account(s). See Advisory Opinion 1987-12 and opinions cited therein. In addition, since the state committee received approximately \$84,000 in contributions between January 1 and April 6, 1987, and may also have received contributions (in excess of 1986 gubernatorial campaign debts) between November 5 and December 31, 1986, aggregation of such contributions against the donors' limits with respect to Mr. Dukakis' 1988 presidential candidacy would appear to be required. Advisory Opinion 1987-12.

2/ The nonacceptance of labor union contributions was indicated by you in a telephone conversation with the Commission's legal staff on April 25, 1987.

3/ The Commission cautions that this analogy would not hold in the case, for example, where a labor organization donated computer equipment to a state candidate who later wished to transfer that equipment to his/her Federal election campaign. Furthermore, the Commission does not intend to suggest or imply in this opinion that the state committee could transfer this equipment without any charge to the Federal committee if its cash balance was necessarily subject to reduction (and exclusion) by application of 11 CFR 104.12.

4/ This opinion does not present circumstances indicating that the state committee will continue to use the lists to solicit new contributions and then transfer updated (or supplemental) lists to the Federal committee. The Commission therefore does not reach issues raised by that hypothetical factual situation. 11 CFR 112.1(b).