



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

January 17, 1992

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-38

Gene Karp  
Chief of Staff and Legal Counsel  
Office of the Honorable Dennis DeConcini  
United States Senate  
Washington, D.C. 20510-0302

Dear Mr. Karp:

This responds to your letter dated November 25, 1991, requesting an advisory opinion on behalf of Senator Dennis DeConcini, DeConcini '88, and DeConcini '94, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the repayment of embezzled funds by the former treasurer of DeConcini '88.

In November 1988, DeConcini '88 ended the election cycle with what appeared to be a surplus of approximately \$440,000. During the first half of 1989, it was discovered that the treasurer of the 1988 committee, Tom Karlsen, had embezzled approximately \$500,000, leaving the committee with a debt of approximately \$60,000.

In June 1989, you asked the Commission for an advisory opinion as to various consequences of the embezzlement, the resultant newly discovered net debt, and remedial measures, including efforts to raise funds to retire the campaign debt. You state that, pursuant to the Commission's advice to you in Advisory Opinion 1989-10, DeConcini '88 held a fundraising event to retire the net debt. Its most recent reports disclose that it owes no debts.

Mr. Karlsen has completed a prison sentence for the embezzlement. In addition to the prison sentence and three years of supervised release, the U.S. District Court ordered that Mr. Karlsen make restitution in a sum to be determined by probation.<sup>1</sup> Mr. Karlsen has since sent a check for \$208 pursuant to that restitution. You state that the payment appears to reflect sales to date. You plan to have the restitution funds received by the 1988 committee transferred to DeConcini '94 at some point.

The request for Advisory Opinion 1989-10 and the opinion itself did not present or contemplate the repayment by Mr. Karlsen of the misappropriated funds. This repayment is now a legal obligation of Mr. Karlsen to DeConcini '88. As such, the funds are a debt owed to and an account receivable of DeConcini '88 and should be reported on the 1988 committee's next report and succeeding reports until extinguished. See 2 U.S.C. 434(b)(8); 11 CFR 104.3(d) and 104.11. As Mr. Karlsen makes restitution, the committee's Schedule D would reflect the reduction in Mr. Karlsen's outstanding debt to the committee, and the debt would be included on line 9 of the summary page. Each payment from Mr. Karlsen would be reportable as an "other receipt" with itemization on Schedule A explaining the nature of the receipt (thus disclosing why it is not a contribution subject to the limits of 2 U.S.C. 441a). 11 CFR 104.3(a)(3)(x) and 104.3(a)(4)(vi). The Commission also concludes that amendments to previous reports are required only to the extent that payments by Mr. Karlsen to the committee were received in a past reporting period. See Advisory Opinion 1982-64.

Commission records indicate that the 1988 committee has not been terminated. If, however, Senator DeConcini or his agents wish to have the debt rolled over to DeConcini '94, the Commission concludes they may do so. Commission regulations expressly exempt from limitation the transfer of funds between the previous and current Federal campaign committees of a candidate provided that the candidate is not a candidate for more than one Federal office at a time and provided that the funds transferred are not composed of contributions that would be in violation of the Act. 11 CFR 110.3(c)(4). Under the same principle, the debt owed by Mr. Karlsen, which is an account receivable of the 1988 committee, may be transferred to DeConcini '94. See, by analogy, Advisory Opinion 1989-10 (where the Commission, under the same principle, permitted DeConcini '94 to transfer funds to DeConcini '88 to enable the latter to pay bills for the audit of the misappropriated funds). The rolling over of Mr. Karlsen's debt should be disclosed on Schedule D of the reports of both committees.

The Commission cautions that Mr. Karlsen may not be used as a conduit for payments from prohibited sources or persons attempting to make contributions to the committee through Mr. Karlsen. See 2 U.S.C. 441a, 441b, 441c, 441e, and 441f.

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)

Joan D. Aikens  
Chairman for the Federal Election Commission

Enclosures (AOs 1989-10 and 1982-64)

1/ At a meeting in September 1991 between the DeConcini campaign and Mr. Karlsen, it was agreed that, in order to make restitution, Mr. Karlsen will market and sell a computer software product owned by him, and Mr. Karlsen will remit a percentage of the sales to the DeConcini campaign committees.