



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 15, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1993-5

Kindra Hefner, Treasurer
Fields for Congress Committee
2607 Old Humble Road
P.O. Box 2406
Humble, Texas 77347

Dear Ms. Hefner:

This responds to your letters of January 9, February 16, and March 6, 1993, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the deposit and reporting of contributions made during the 1992 campaign to the Fields for Congress Committee ("the Committee") but not discovered until after the 1992 campaign.

The Fields for Congress Committee is the principal campaign committee of U.S. Representative Jack Fields. During the 1992 campaign, you state that \$5,405 in contributions were mailed to the Committee's post office box from several locations and contributors. These contributions consisted of checks written by seven individuals and three political committees. The documentation you have provided indicates that the contributions were mailed in envelopes postmarked during the last week of October, 1992. Two of these contributions were mailed from a satellite campaign office and two sets of contributions were collected by another individual or contributor and mailed in one envelope.^{1/}

While these contribution checks were apparently mailed during the last week in October and, accordingly, were delivered to the Committee's post office box, the Committee did not obtain use of the checks until January 4, 1993. You state that when obtaining holiday mail, which had been removed from the committee's post office box, you were informed for the first time by postal authorities that additional mail, including the \$5,405 in contributions, had also been removed from the box.^{2/} It was only at this later time that you received custody of the checks. You were

informed that the removal had occurred either on October 31 or November 1, 1992. You now seek guidance as to the procedure the Committee should adopt in regard to the treatment of these contributions.^{3/} The most recent report filed by the Committee indicates that it has no outstanding debts.

Commission regulations at 11 CFR 110.1(b)(6) and 110.2(b)(6) provide that a contribution mailed to the candidate, or to the political committee or its agent, shall be considered to be made on the date of the postmark. 11 CFR 102.8(a) provides that the date of receipt for a contribution received by a committee is the date the committee treasurer, or any person acting for the committee, obtains possession of the contribution. Under 11 CFR 103.3(a), all receipts of a political committee shall be deposited in an account established by the committee as its campaign depository within 10 days of the treasurer's receipt, except that any contribution may be returned within 10 days of the treasurer's receipt. Commission regulations limit the contributions that an authorized committee may accept with respect to an election already held. A committee may only accept a contribution for a past election if the amount does not exceed the amount of net debts outstanding on the date the contribution is received. 11 CFR 110.1(b)(3)(iii), 110.2(b)(3)(ii).

Considering the facts presented in your request, the contributions can be said to have been made no later than the date of the postmark on the envelopes, that is during the last week in October. The Committee received constructive possession of the checks when they were placed in its post office box. However, an intervening event, action by the postal authorities, prevented the Committee from obtaining the use of the checks and depositing them.

The Commission has previously examined circumstances in which a committee's use or deposit of contribution checks was interrupted by persons or events. In Advisory Opinion 1992-29, the Commission considered the situation where a campaign committee failed to process 1991 and early 1992 contribution checks within the 10 day period, but sought to deposit them several months later. Noting that the failure occurred because campaign staff had placed the checks in a desk drawer without alerting the campaign treasurer, the Commission required that the contribution amounts be refunded instead. In Advisory Opinion 1989-10, a committee wished to solicit new contributions, under limits applicable to a previous election, to cover the committee's financial losses due to a former treasurer's embezzlement of committee funds. The Commission determined that the embezzlement by itself did not create a new committee debt and that the committee could only accept contributions in amounts equal to its net debt.

Your situation is distinguishable from both these opinions. Unlike Advisory Opinions 1992-29 and 1989-10, there is nothing to indicate that campaign staff were responsible for the failure to obtain or deposit the contribution checks. There is likewise no evidence of wrongdoing. In addition, unlike Advisory Opinion 1989-10, the funds in question had not yet been deposited in the campaign account. Rather, your situation is similar to the circumstances presented in Advisory Opinion 1992-42. In that opinion, contribution checks collected during the 1992 campaign were received by a committee and mailed to a bank for deposit, but were lost in transit. By the time the loss was discovered and investigated, the general election had passed. The Commission concluded that since the requesting committee and its agents had not been at fault, it

could receive replacement checks and treat them as made for the 1992 election even though the requesting committee had no outstanding debts.

In accord with Advisory Opinion 1992-42, the Commission concludes that your Committee may likewise deposit and use the \$5,405 in contributions provided they are otherwise within the donors' limits for the 1992 general election. Regarding the reporting of the contributions, the Fields for Congress Committee should report them as 1992 general election contributions on Schedule A of its next report with a short memo entry explaining the circumstances of the late deposit and making reference to this opinion.^{4/} The transfer of the contribution funds from the Fields for Congress Committee to Representative Fields' Senate campaign committee also should be reported by both committees.^{5/}

This response constitutes an advisory opinion concerning the 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

Enclosures (AOs 1992-42, 1992-29 and 1989-10)

ENDNOTES

1/ The first set is two contribution checks of \$50 each mailed with a letter from the law firm of Keck, Mahin & Cate identifying the contributors as employees of members of the American Public Communications Council ("APCC"). The second set of contributions consists of a \$500 contribution check made by Mrs. Tom Loeffler and two checks totaling \$2,250 made by the USAA Group Political Action Committee. These contributions were forwarded to the Committee by Mrs. Loeffler. See also footnote five.

2/ The first set is two contribution checks of \$50 each mailed with a letter from the law firm of Keck, Mahin & Cate identifying the contributors as employees of members of the American Public Communications Council ("APCC"). The second set of contributions consists of a \$500 contribution check made by Mrs. Tom Loeffler and two checks totaling \$2,250 made by the USAA Group Political Action Committee. These contributions were forwarded to the Committee by Mrs. Loeffler. See also footnote five.'

3/ Representative Fields is currently seeking election to the U.S. Senate seat vacated by Senator Lloyd Bentsen. In your February 16, 1993 letter, you state that these contributions have been transferred to Representative Fields' Senate campaign committee.

4/ The Committee should also report the date of receipt of these contributions as between October 31 and November 1, 1992.

5/ This opinion is expressly limited to the facts of the request. The Commission does not address the possible application of 2 U.S.C 441a(a)(8) and 11 CFR 110.6(b)(1) to the contributions described in footnote one.