



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 13, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1993-22

The Honorable Robert A. Roe
P.O. Box 407
Wayne, New Jersey 07470

Dear Mr. Roe:

This refers to your letter of November 8, 1993, concerning application of the Federal Election Campaign Act of 1971 ("the Act"), as amended, to certain proposed uses of campaign funds derived from your former principal campaign committee, the Re-Elect Roe to Congress Committee (the "Campaign Committee").

Your request and reports filed with the Commission provide background for your proposal. You state that you were a Member of Congress commencing in November, 1969, and continuing through the 102nd Congress. You announced on March 30, 1992 that you would not run for re-election, and you did not serve in the 103rd Congress. You state that as of November 30, 1989, the unobligated balance of the Campaign Committee's funds was \$569,512. On February 3, 1993, the treasurer of the Campaign Committee filed a statement of organization with the Commission for the Roe Political Committee (the "Roe Committee"), a nonconnected multicandidate political committee.^{1/} Beginning early in 1993, the Campaign Committee transferred all of its remaining funds totaling \$800,308 to the Roe Committee. The last transfer was completed on June 8, 1993. The Campaign Committee then filed a termination report on August 2, 1993 which was accepted by the Commission as a valid termination on August 27, 1993.

You state that on November 4, 1993, the amounts remaining from funds which the Campaign Committee had transferred totaled \$772,853. You plan to transfer \$569,512, the amount equaling the prior November 30, 1989, balance, of the Roe Committee's funds to create and fund the Robert A. Roe Charitable Foundation (the "Foundation").^{2/} The rest of the funds of the Campaign Committee would remain with the Roe Committee. You plan to designate yourself as the initial

trustee of the Foundation and, in that position, to distribute any part of the Foundation funds to "qualifying" organizations as defined by the trust documents. You state that these organizations include, according to the trust document, those which would qualify for a charitable income tax deduction under the relevant sections of the Internal Revenue Code. You state that the trustee has the absolute discretion to make or not make contributions in any year and to choose the organization receiving the contribution. As trustee, you have the power to choose a successor. You state that a trustee (other than yourself) is entitled to receive reasonable compensation for his or her services.

Aside from your power as the initial trustee, you also reserve the right to amend and revoke the trust for any reason during your lifetime or in your will. In addition, should you become disabled, as determined by a certified physician, the trust property is to be used for your benefit.

You ask how the Act would apply to the circumstances you describe. You further ask for legal guidance regarding: (1) the reporting and filing requirements for the proposed use of campaign funds; (2) the guidelines on your ability to serve as a director of the Roe Committee; (3) whether the "Roe Political Committee" is a permitted name for the multicandidate political committee; (4) the permitted use of funds by the Roe Committee; (5) limitations on the use of funds by the Roe Committee prior to qualification as a multicandidate political committee; (6) whether the Roe Committee may avail itself of the prior length of existence of the Campaign Committee and the number of contributions made by such committee since its registration with the Commission; and (7) whether the Roe Committee qualifies as a multicandidate political committee within the meaning of the Act.

Creation of the Roe Committee and the Foundation

The Commission has previously stated that, under the Act and Commission regulations, excess campaign funds may be contributed to any organization described in section 170(c) of Title 26, or may be used for any other lawful purpose. See 2 U.S.C. 439a and Advisory Opinions 1993-13, 1993-10 and 1993-6. The Commission has concluded that excess campaign funds may be transferred to fund the creation of a multicandidate committee and its subsequent contributions. See Advisory Opinions 1988-41 and 1985-30. However, under the Act, excess campaign funds may not be converted by any person to any personal use. 2 U.S.C. 439a; 11 CFR 113.2(d), Advisory Opinions 1993-6, 1993-1 and 1992-12.^{3/} A limited exception to this prohibition exists for those persons who were Members of Congress on January 8, 1980, and did not serve in the 103rd Congress. Further, this limited exception only applies to campaign funds in an amount that equals the officeholder's November 30, 1989, unobligated balance. See Pub. L. 101-194, §504(b), 103 Stat. 1755 and 11 CFR 113.2(e).

With regard to the use of the Campaign Committee's excess campaign funds to create the Roe Committee and the Foundation and to fund contributions and donations made by both entities, both proposals are permitted by these past opinions. In addition, because of your status as a holder of Federal office on January 8, 1980, who did not serve in the 103rd Congress, you may convert funds equaling the November 30, 1989, unobligated balance of the Campaign Committee to personal use. Your request indicates that you intend to transfer to the Foundation all of your November 30, 1989, campaign fund balance. Accordingly, the transfer of \$569,512 or your

proposed use of this amount through the Foundation constitutes a personal use. The prohibition of 439a does not apply to these funds. The Commission notes that the funds remaining in the Roe Committee represent an amount in excess of the November 30, 1989, unobligated balance and are therefore subject to the prohibitions of 439a. Thus, the Commission concludes that you will have to insure that these remaining Roe Committee funds are not expended for your personal use. The reimbursement of your ordinary and necessary expenses relating only to your political activity as a director of the Roe Committee would not be a personal use. See Advisory Opinions 1993-6 and 1983-27.

Multicandidate Status and the Roe Committee

Under the Act, a committee may qualify as a multicandidate committee if it has been registered with the Commission for at least 6 months, has received contributions from more than 50 persons, and has made contributions to five or more candidates for Federal office (unless it is a state political party organization). 2 U.S.C. 441a(a)(4) and 11 CFR 100.5(e)(3). The Commission has previously stated that in meeting the requirements for multicandidate status, a former principal campaign committee may avail itself of the length of time of its prior registration, the number of contributions it has made in the past and the number of contributions it has received. See Advisory Opinions 1988-41 and 1985-30.

According to the reports filed with the Commission, the Campaign Committee, prior to its termination, had been registered for more than six months, had received more than 50 contributions, and had made contributions to more than five Federal candidates. The Roe Committee and the Campaign Committee existed concurrently while the transfers were being made from the Campaign Committee to the Roe Committee. Furthermore, all funds of the Roe Committee were provided only by the Campaign Committee. Therefore, the funding of the Roe Committee as the successor committee to the now terminated Campaign Committee presents a situation very similar to previous circumstances where former principal campaign committees have been permitted to convert their status to multicandidate committees. Accordingly, the Commission concludes that the Roe Committee qualifies for multicandidate status and may make contributions as permitted by 2 U.S.C. 441a(a)(2).^{4/}

As a multicandidate committee, the Roe Committee may continue to use its current name. Under 2 U.S.C. 432(e)(4), a political committee which is not an authorized committee of a candidate may not include any candidate's name in its name. However, since you are no longer a candidate for Federal office, this section is not applicable. See Advisory Opinion 1985-30 and compare Advisory Opinion 1982-32.

Filing and Reporting Obligations

The Roe Committee, in its first filed report, recorded the receipt of funds from the Campaign Committee as a transfer from an affiliated committee. When transferring funds from the Roe Committee to create the Foundation, the Roe Committee should list such transfers as "other disbursements." See 11 CFR 104.3(b)(3)(ix). Further, the filing dates for the Roe Committee reports are now covered by 2 U.S.C 434(a)(4), rather than section 434(a)(2).^{5/} The Foundation has no reporting and filing obligations under the Act unless it engages in political activity by

receiving contributions, or by making contributions or expenditures, to influence a Federal election in excess of \$1,000 during a calendar year. See also 2 U.S.C. 434(c)(requiring reports of independent expenditures made by any person if the amount exceeds \$250 in a calendar year).

The Commission expresses no opinion regarding any Federal or other tax ramifications, since those questions are outside its 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.

For the Commission,

(signed)

Trevor Potter
Chairman

Enclosures (AOs 1993-13, 1993-10, 1993-6, 1993-1, 1992-12, 1988-41, 1985-30, 1983-27 and 1982-32)

ENDNOTES

1/ Your request also refers to an amended statement of organization filed with the Commission on June 10, 1993.

2/ You have informally indicated to the Commission's legal staff that this is a private foundation for purposes of the Internal Revenue Code and that the proposed transfer of Roe Committee funds is taxable to you because it does not qualify for exemption under 26 U.S.C.527(d).

3/ The Commission is currently engaged in a rulemaking to offer guidance on what constitutes personal use of campaign funds. See 58 Fed. Reg. 45463 (August 30, 1993).

4/ Rather than a \$1,000 per election limitation, multicandidate committees may make contributions of \$5,000 per election to candidate authorized political committees. However, while political committees may contribute \$20,000 to national party committees per year, multicandidate committees may only contribute \$15,000. See 2 U.S.C. 441a(a)(2)(B). New regulations which became effective on January 1, 1994, will require the Roe Committee and all multicandidate committees to inform recipients of their contributions that they have attained multicandidate status, if any such contribution to a candidate committee exceeds \$1,000 per election. See new Commission regulations at 11 CFR 110.2(a)(2) and 58 Fed. Reg. 42172 (August 6, 1993).

5/ As of January 1, 1994, the new amended FEC Form 3X, the form for reporting receipts and disbursements, will require that all multicandidate committees designate their status with each

report they file. See new Commission regulations at 11 CFR 102.2 and 58 Fed. Reg. 42172 (August 6, 1993).