



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 30, 1994

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-31

Warren J. Leshner, Treasurer
Dean Gallo for Congress Committee
1711 Route 46
Parsippany, New Jersey 07054

Dear Mr. Leshner:

This refers to your letters of September 12, and August 30, 1994, on behalf of Dean Gallo for Congress Committee ("the Committee") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the Committee's proposed use of general election contributions.

The Committee is the principal campaign committee of Dean Gallo, a member of the U.S. House of Representatives from New Jersey's Eleventh Congressional District. Mr. Gallo filed a Statement of Candidacy on November 3, 1993, and won the Republican primary election on June 7, 1994. However on August 23, Mr. Gallo announced that he would not seek re-election in November for reasons of health.^{1/}

During the course of the 1994 campaign, until Mr. Gallo's withdrawal on August 23, you state that the Committee received \$103,612 in general election contributions. Of this amount, \$48,000 was received before the primary and \$55,612 was received after primary, up to the date of Mr. Gallo's withdrawal from the campaign. You also state that during the period of time between June 7 and August 23, the Committee made \$47,632 in general election expenditures. An additional \$9,930 in general election expenditures were made in the period from August 24, 1994, to September 12, 1994.^{2/}

The Committee now seeks to use the general election contributions to pay for the general election expenses already incurred. If the general election contributions exceed these expenses, the Committee will use the remaining general election funds for the purposes allowed by a multi-

candidate committee, which you state the Committee expects to become in the near future. You ask whether this proposed plan is permissible under the Act and Commission regulations.

Mr. Gallo won the primary and was the Republican party's candidate for the general election for approximately 11 weeks. Even though he will not be a candidate on the date of the actual general election, he did campaign as a general election candidate and incur expenses. Your situation is, therefore, comparable to that of primary election candidates who withdraw from primary races, but wish to retain primary election contributions made prior to their withdrawal, in part, to pay for primary campaign expenses. In these circumstances, the Commission has concluded that the candidate may use previously received primary election contributions. See Advisory Opinions 1988-41 and 1986-12.

In your circumstance, the Commission likewise concludes that the Committee may retain the general election contributions made after Mr. Gallo's June 7, 1994, primary victory (as well as any made before the primary) and before his August 23, 1994, withdrawal from the general election.^{3/}

These contributions may be used to pay any general election expenditures.

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 but may not be converted by any person to any personal use. 2 U.S.C. 439a; 11 CFR 113.2(d), and Advisory Opinion 1993-22.^{4/} The Commission has concluded, however, that excess campaign funds may be retained or transferred to finance the creation of a multicandidate committee and its subsequent contributions. See Advisory Opinions 1993-22, 1988-41 and 1985-30. Therefore, you may also use the remaining general election contributions to create a multicandidate committee.^{5/}

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 1993-22, 1989-29, 1988-41, 1986-17, 1986-12 and 1985-30)

ENDNOTES

1/ You state in your request that Mr. Gallo will complete his term in the 103rd Congress and then retire.

2/ Informally, you have told the Commission that these latter expenditures represent amounts owed, now due, from prior consulting services rendered at the time Mr. Gallo was still a general election candidate.

3/ 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. However Commission regulations at 11 CFR 110.1(b)(6) and 110.2(b)(6) also 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. Therefore, any general election contribution mailed to the campaign with a postmark after the August 23, 1994, date must be returned.

Of course, contributions that would be considered as made for the general election include not only those specifically designated for the general election, but also those undesignated contributions made after the date of the primary. See 11 CFR 110.1(b)(2)(ii).

4/ 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. Since Mr. Gallo served in the 103rd Congress, the exception would not apply to the circumstances in your request. See 11 CFR 113.2(e).

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).

5/ The simplest option available to the Committee, and approved in past opinions, is to have Mr. Gallo's principal campaign committee convert its status to a multicandidate committee. See Advisory Opinions 1988-41 and 1985-30. For guidance as to the issues presented by the change in the Committee's reporting and filing status, see Advisory Opinion 1993-22.