



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

May 5, 2005

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2005-04

Jan Witold Baran, Esq.  
Wiley, Rein & Fielding, LLP.  
1776 K Street NW  
Washington, DC 20006

Dear Mr. Baran:

We are responding to your advisory opinion request on behalf of Representative John Boehner and Friends of John Boehner (“Committee”) regarding the assignment and reporting of the payments of a court-ordered restitution under the Federal Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations. The Committee is the principal campaign committee of Representative Boehner. Mr. Russell E. Roberts, a former Committee treasurer, is required to pay restitution to the Committee as part of his sentencing for embezzling campaign funds. The Committee seeks to assign the restitution payments to the Community Foundation of West Chester/Liberty (“Foundation”), a charitable organization under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). It also asks whether it is required to report the embezzled amount and the restitution payments as a debt and receipts, respectively.

The Commission concludes that the Committee must continue to treat and to report the restitution amount as a debt owed to the Committee and the repayment checks it receives as Committee receipts. However, if the court order were to be amended to require that the restitution payments be made to the Foundation rather than to the Committee, the Committee could thereafter cease to report the payments and the debt.

***Background***

The facts of this request are presented in your letter dated March 15, 2005 and subsequent electronic mail messages.

On April 15, 2003, the Committee notified the Commission that Mr. Roberts had misappropriated campaign funds. At that time, the Committee filed amendments to all reports for calendar years 2000, 2001, and 2003 to reflect the amounts that Mr. Roberts had paid to himself. While the Committee stated that it would seek restitution, it also informed the FEC that restitution was highly unlikely. Accordingly, the Committee did not report any debt owed from Mr. Roberts.

On January 29, 2004, the District Court for the Southern District of Ohio ordered Mr. Roberts to pay restitution to the Committee in connection with his sentencing for the embezzlement of funds. The order states, in pertinent part,

The Defendant shall pay restitution of \$617,562.88. While incarcerated in the Bureau of Prisons, the Defendant shall pay at least \$25.00 per quarter toward the restitution obligation if assigned a non-UNICOR or grade 5 UNICOR job; or at least 50% of his monthly pay if assigned a UNICOR grade 1-4 job. Within thirty days of the commencement of the term of supervised release, the Defendant shall pay restitution at a rate of at least \$10 per month. The Court will reassess the Defendant's ability to pay from time to time upon the probation officer's recommendation.

Pursuant to other provisions of the order, Mr. Roberts was sentenced to imprisonment of thirty months and thereafter a term of supervised release of three years.

The Committee recently received a \$25 installment from Mr. Roberts through the court system. For the foreseeable future, Mr. Roberts will pay no more than \$100 per calendar year in restitution, and once released, the restitution amount will increase to \$120 per year. At this rate of payment, the Committee does not anticipate that it will ever obtain full restitution from Mr. Roberts.

Instead of accepting restitution to the Committee, Representative Boehner wishes the funds to be redirected or assigned to the Foundation. The Committee does not plan to deposit the restitution payments into any of its accounts. Rather, it wishes to endorse any restitution payments to the Foundation. Further, the Committee is prepared to petition the court to revise the sentencing and restitution order to provide that the checks be made payable to the Foundation directly in order to avoid future reporting of the debt and receipts of restitution payments, if required by the Commission.

### ***Question Presented***

*If the Committee assigns the restitution payments to the Foundation, must the full restitution amount be reported continuously as a debt and each restitution payment be reported as a receipt?*

### ***Legal Analysis and Conclusion***

Given Mr. Roberts's obligation under the court order to make restitution payments to the Committee, the restitution amount must be reported as a debt owed to the Committee by Mr. Roberts until the debt is extinguished unless the court order is amended so that Mr. Roberts is required to pay restitution directly to the Foundation. An amended court order would extinguish the debt owed to the Committee and the Committee would no longer need to report the debt and receipt of the restitution payments. In the absence of a modified or amended court order, the Committee must follow the reporting requirements outlined below.

Political committees must report all debts owed to them until the debt is extinguished. 2 U.S.C. 434(b)(8); 11 CFR 104.11(a). Mr. Roberts is required by the court order to pay the entire restitution amount to the Committee and thus owes a debt to the Committee that is subject to the reporting requirements of the Act and Commission regulations. *See* Advisory Opinion 1991-38 (the Commission concluded that a court order requiring restitution payment to an authorized committee gave rise to a debt owed to the authorized committee that must be reported). The use of the restitution payments to make a charitable donation, though permissible, does not change the underlying legal obligations that created the debt.<sup>1</sup>

Political committees must also deposit and report all their receipts except contributions that are returned. 2 U.S.C. 432(h) and 434(b)(2); 11 CFR 103.3(a) and 104.3(a)(2). Because Mr. Roberts is obligated to make restitution payments to the Committee, the payment checks are receipts of the Committee. *See* Advisory Opinion 1991-38 (the Commission also concluded that restitution payments are receipts that must be reported). Endorsing the payment checks to the Foundation does not alter the fact that the checks are made payable to the Committee and thus are a receipt of the Committee.

Consequently, the entire amount of the restitution is a reportable debt owed to the Committee. Similarly, each restitution payment is a receipt of the Committee that must be included in the Committee's reports. The reporting requirements for the Committee are similar to those set forth in Advisory Opinion 1991-38. The Committee is required to report the total amount owed by Mr. Roberts as a debt owed to it and must record the subsequent reductions of debt.<sup>2</sup> *See* 2 U.S.C. 434(b)(8) and 11 CFR 104.3(d). Payment checks from Mr. Roberts must be reported as "other receipts" under 11 CFR 104.3(a)(3)(x). Donations to the Foundation must be reported as "other disbursements" under 11 CFR 104.3(b)(2)(vi). If the payments from Mr. Roberts or the Committee's subsequent donations to the Foundation during an election cycle exceed \$200, they must be itemized under 11 CFR 104.3(a)(4)(vi) and 104.3(b)(4)(vi).

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<sup>1</sup> Under 2 U.S.C. 439a(a)(3), candidates and Federal office holders may use contributed amounts for contributions to an organization described in section 170(c) of Title 26. Thus, the proposed donation of funds to the Foundation, a section 501(c)(3) organization, is explicitly permitted by 2 U.S.C. 439a(a) because such organizations are described in 26 U.S.C. 170(c).

<sup>2</sup> The amount of the reported debt would be reduced by each restitution payment made with each payment reported as an "other receipt" under 11 CFR 104.3(a)(3)(x).

Further, because political committee disbursements must be made by checks or similar drafts drawn on the political committee's accounts at its campaign depository, the Committee cannot simply endorse the restitution payment checks to the Foundation as you suggest. *See* 2 U.S.C. 432(h)(1) and 11 CFR 103.3(a). Section 432(h) and Commission regulations require that the Committee deposit the funds first into its account and then draw the check through which the donation is made.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

Scott E. Thomas  
Chairman

Enclosure (Advisory Opinion 1991-38)