



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 25, 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2016-25

Joseph C. Chapelle, Esq.
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Indianapolis, IN 46204-3535

Dear Mr. Chapelle:

We are responding to your advisory opinion request on behalf of Mike Pence for Indiana concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (the “Act”), and Commission regulations to the requestor’s spending of nonfederal funds for certain expenses related to winding down its state campaign operations. The Commission concludes that the requestor may spend the nonfederal funds in its campaign account for these activities as long as such spending is consistent with state law.

Background

The facts presented in this advisory opinion are based on your letter received on December 12, 2016, and publicly available information filed with the Commission and the Indiana Secretary of State.

Michael Pence is the Vice President of the United States and a former Governor of Indiana. Until July 15, 2016, he was a candidate for re-election as Governor, with the requestor as his campaign committee organized under state law.¹ Advisory Opinion Request (“AOR”) at 1. Upon Mr. Pence’s nomination for federal office, according to the request, the requestor ceased raising funds, paid all expenses it had accrued up to that point, and applied a reasonable accounting method to determine the amount of remaining funds that were federally permissible in amount and source. *Id.* These federally permissible funds were contributed to other committees and refunded to eligible donors, and no such funds remain in the campaign account.

¹ Pence, Michael Richard, Indiana State Form 4604, Amend, at 1 (Jan. 16, 2014), <https://campaignfinance.in.gov/INCF/TempDocs/7265ac92-34b9-4628-a50c-46c1f722bed8.pdf>.

Id. The requestor has retained a surplus of “nonfederal funds”—those that were raised consistent with state law but fall outside the Act’s contribution limits and source restrictions, *see* 52 U.S.C. § 30125(e)—in its state campaign account.² *Id.*

Questions Presented

1. *May the requestor use nonfederal funds in its state campaign account to pay for the storage of nonfederal campaign assets that are solely owned by the requestor, such as files, filing cabinets, desks, chairs, and a vehicle—not to be used by any active state or federal campaign—before being disposed of properly under the Act?*
2. *May the requestor use nonfederal funds in its state campaign account to pay for either legal or accounting expenses necessary to comply with Indiana campaign disclosure requirements applicable to state campaign committees?*
3. *May the requestor use nonfederal funds in its state campaign account to pay for the legal and accounting expenses typically associated with winding down a campaign committee following the distribution or disposal of assets?*

Legal Analysis and Conclusion

Yes, the requestor may use nonfederal funds in its state campaign account to pay for the storage of state campaign assets, legal or accounting expenses necessary to comply with state disclosure requirements applicable to state committees, and legal or accounting expenses for winding down the state campaign, provided that such spending is consistent with state law.

A federal candidate or officeholder, or an entity directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, a federal candidate or officeholder may solicit, receive, or spend funds in connection with a state election “only in amounts and from sources that are consistent with State law, and that do not exceed the Act’s contribution limits or come from prohibited sources under the Act.” 11 C.F.R. § 300.62; *see* 52 U.S.C. § 30125(e)(1)(B). The Act provides an exception, however, in certain circumstances where a federal candidate or officeholder “is or was also a candidate for State or local office.” 52 U.S.C. § 30125(e)(2). Such a candidate or officeholder may solicit, receive, or spend nonfederal funds as long as that solicitation, receipt, or spending: (1) is “solely in connection with such election for State or local office”; (2) “refers only” to him or her, to other candidates for that same state or local office, or both; and (3) is permitted under state law. *See id.*; 11 C.F.R. § 300.63. The Commission has explained that this rule is intended “to provide an equitable basis for a Federal officeholder or candidate to conduct his or her campaign for non-Federal office so that he or she is not financially disadvantaged when competing with a non-Federal opponent who may raise

² Indiana law differs from federal law by, for instance, permitting candidates to accept certain contributions from corporations and unlimited contributions from individuals. *See* Ind. Code § 3-9-2-3 (providing that certain corporations “may make a contribution to aid in the . . . election or defeat of a candidate”); Indiana Election Division, 2016 Indiana Campaign Finance Manual (Oct. 2015) at 66, http://www.in.gov/sos/elections/files/2016_Campaign_Finance_Manual_Complete.pdf (noting that, “[u]nder Indiana law, individuals may make an unlimited amount of contributions to candidates”).

and spend funds without the same restrictions that [the Act] imposes on Federal candidates and officeholders.” Advisory Opinion 2007-26 (Schock) at 6; *see also* Advisory Opinion 2009-06 (Risch) at 3 (concluding that federal candidate may solicit nonfederal funds to retire debts of previous state campaign); Advisory Opinion 2007-01 (McCaskill) at 4 (same).

Here, the restrictions of section 30125(e)(1)(B) apply to the requestor because it is an entity established, financed, maintained, or controlled by Mr. Pence, a federal officeholder. *See* Advisory Opinion 2006-38 (Casey) (noting application of provision to state campaign committee of federal officeholder). But the Commission concludes that the activities described in your request satisfy the elements of the exception in section 30125(e)(2). First, the requestor’s proposed spending—for storing “non-federal campaign assets,” legal or accounting expenses to comply with “Indiana campaign disclosure requirements imposed on state campaign committees,” and legal or accounting expenses to wind down the state campaign—are solely in connection with Mr. Pence’s campaign for Governor. Second, the proposed spending does not “refer” to any candidate, let alone a candidate other than Mr. Pence or his opponent. Third, the request states that the funds were raised in compliance with applicable Indiana law, and the Commission assumes without deciding that the spending of the funds as proposed would also be compliant with Indiana law.³ Thus, the requestor may use nonfederal funds in the state campaign account to pay for the activities as described in the request.

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* 52 U.S.C. § 30108. 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. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission’s website.

On behalf of the Commission,



Steven T. Walther
Chairman

³ The Commission expresses no view regarding the application of Indiana law to these funds or transactions.