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May 22, 2018

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

OFFICE OF
GENERAL COUNSEL
2018 MAY 23 AM 11:53

RE: **Request for Advisory Opinion**

Dear Ms. Stevenson:

This law firm represents Congressman Darrell Issa. We write you with a request for an advisory opinion addressing whether Congressman Issa may reopen a former 1998 primary election committee – Darrell Issa for United States Senate, which was granted administrative termination on December 9, 2004, and whether he may transfer funds from his principal campaign committee, Darrell Issa for Congress (“the Congressional committee”), into the revived former principal campaign committee, Darrell Issa for United States Senate (“the Senate committee”), for the purpose of terminating his Congressional committee¹ and repaying in part an outstanding debt of the terminated Senate committee, allowing repayment of a small portion of that terminated committee’s outstanding debt, a \$9 million personal loan from Congressman Issa. This debt was incurred prior to the enactment of the debt repayment limit of the Bipartisan Campaign Reform Act (“BCRA”), was consistently reported as debt in filings with the Commission, and was never forgiven. Upon paying a portion of the debt with such transferred funds, Congressman Issa will be able to wind up the operations of both committees.

We believe the opinion request should confirm that this proposed transfer and repayment is consistent with previous Commission advisory opinions which have approved the transfer of funds from a candidate/officerholder’s current committee to his former, terminated pre-BCRA committee and allowed revival of the former and repayment of a committee’s debt to the candidate without application of the pre-BCRA loan limits.

ANALYSIS

Whether the Senate committee can be reactivated

A terminated committee can be revived, but must resume filing reports until it is again terminated. Federal Election Commission, *RAD Processes* (last visited May 17, 2018),

¹ Congressman Issa was most recently re-elected in 2016. He commenced raising funds to seek re-election during the 2018 election, but in early 2018 announced that he would not ultimately seek re-election. He refunded approximately \$ 181,397 to contributors, and has on hand as of this date \$752,000, which includes \$110,118 in recount funds. The Congressional committee has no net debts outstanding. The Senate committee has approximately \$9 million in debt incurred during Congressman Issa’s 1998 campaign, which was never forgiven.

https://transition.fec.gov/rad/rad_process/FEC-ReportsAnalysisDivision-RADProcesses.shtml#FutureReports. (“Any receipt or disbursement of funds for the purpose of influencing a Federal election or supporting a Federal candidate will void the administrative termination and the committee will be required to file reports again.”)

The Commission has addressed the revival of terminated committees on a few occasions. In Advisory Opinion 1980-114, the Federal Election Commission concluded that it was permissible for a candidate to reopen his terminated committee and retroactively void his forgiveness of a personal when the committee received a refund from a telephone company, and to repay part of the loan with that refund. And in Advisory Opinion 1997-28 a candidate was allowed to revoke the prior termination of his committee because of erroneous tax advice.

Here, Congressman Issa is “not seeking to retroactively change the characterization of the underlying loan transaction.” Advisory Opinion 1997-28. Further, “the Committee continuously regarded and reported the prior loans as debt.” *Id.* The Commission previously treated these two factors as “central” to its decision to allow revival of a terminated committee for the purpose of repaying an outstanding personal loan owed by the committee. *Id.* Thus, allowing Congressman Issa to re-open the Senate committee is consistent with the aim of the Federal Election Campaign Act to ensure transparency and should be permitted.

Whether funds can be transferred from the Congressional committee to the Senate committee for the purpose of repaying in part the Senate committee’s debt (the Issa loan)

A candidate may transfer funds between committees he or she controls without limit as long as the transferring committee has no net debts outstanding and follows a specified procedure. The Congressional committee has no net debts outstanding, and otherwise will satisfy those requirements.

11 C.F.R. 110.3(c)(4) provides:

The contribution limitations... shall not limit... Transfers of funds between a candidate's previous Federal campaign committee and his or her current Federal campaign committee, or between previous Federal campaign committees, provided that the candidate is not a candidate for more than one Federal office at the same time, and provided that the funds transferred are not composed of contributions that would be in violation of the Act. The cash on hand from which the transfer is made shall be considered to consist of the funds most recently received by the transferor committee. The transferor committee must be able to demonstrate that such cash on hand contains sufficient funds at the time of the transfer that comply with the limitations and prohibitions of the Act to cover the amount transferred.

In Advisory Opinion 1987-04, the Federal Election Commission addressed the case of a candidate who wished to transfer funds from his 1986 Senatorial committee to his 1984 Presidential committee after he had previously publicly announced his intent to withdraw from the presidential race. The candidate wished to make the inter-committee transfer in order to repay part of a \$3 million debt owed by the Presidential committee. The Federal Election

Commission concluded that this was permissible as “properly viewed as a transfer between current and previous principal campaign committees of the same individual notwithstanding that he was a candidate for two different Federal offices.” Thus, Congressman Issa’s inter-committee transfers should be allowed as between those designated for different election cycles.

Furthermore, when an individual seeks different offices in different election cycles, surplus funds from the earlier campaign that remain after the general election may be transferred to the later campaign without aggregating the contributions of the original contributor to the two committees. This principle applies also in reverse, to transfers from a later committee to an earlier one. See Advisory Opinion 1987-04 (“aggregation of contributions for limit purposes from one election to another is not required, where the contributions were within the donor’s limit with respect to the election for which originally made, even though such contributions are used to retire the campaign debts of the same candidate for a previous election.”) Since Congressman Issa complied with contribution limits with respect to the donors for each separate committee, he should not violate the contribution limits by transferring them between the committees after the election and using them to repay the debt owed to the previous committee.

With respect to the recount funds held in the Congressional committee, the Commission has affirmed in the past that a candidate’s principal committee may solicit, spend and transfer recount funds, which are not “contributions” or “expenditures.” See, e.g., Advisory Opinion 2006-24; see also 52 U.S.C. 30125(e); 11 C.F.R. 100.91, 100.151 and 104.3(b)(2)(ii). This request seeks Commission confirmation that the recount funds raised and held in the Congressional committee may be transferred to the Senate committee. It further inquires as to whether the recount funds from particular donors are subject to the requirements applicable to contribution transfers described in 11 C.F.R. 110.3 (c)(4) above.

Whether the Senate committee can repay the candidate above the \$250,000 limit imposed by BCRA

Generally speaking, in order for a law to have retroactive effect (that is, to attach new legal consequences for conduct engaged in that precedes the law’s passage) Congress must clearly state its intent to give the law such effect on the face of the law. *See Plaut v. Spendthrift Farm, Inc.* (1995) 514 U.S. 211, 226. (“When a new law makes clear that it is retroactive, an appellate court must apply that law in reviewing judgments still on appeal that were rendered before the law was enacted, and must alter the outcome accordingly.”) The Federal Election Commission has concluded that Congress has expressed no such intent with regard to the debt repayment limit enacted as part of BCRA. In Advisory Opinion 2008-22, the Commission explained:

The \$250,000 limit imposed by BCRA on repayment of personal loans from postelection contributions does not apply to loans made before the November 6, 2002 effective date of the legislation. The E&J for the regulations implementing the statute explains that the limitations on repayment of personal loans from contributions made after the respective election do not apply to personal loans made before this date. Consequently, any outstanding loan balances of candidate loans that were made before November 6, 2002, may be repaid with contributions made after this date subject to the provisions

concerning net debts outstanding in 11 CFR 110.1(b)(3). Because Senator Lautenberg made the loans for his 2002 election in October 2002, prior to the statute's effective date, BCRA does not limit the amount of personal loans for that election that the Committee can repay using contributions received after the 2002 election.

Similarly, the Senate committee incurred the \$9 million debt to Congressman Issa before November 6, 2002. As the law does not apply retroactively to attach the debt repayment limit to that transaction, the Senate committee should be free to repay the loan from Congressman Issa with the funds transferred from the Congressional committee.

Reporting the loan repayment

The Senate committee intends to file a Form 3 during the next reporting deadline. On that report, it will disclose the contributions transferred from the Congressional committee to the Senate committee as attributed to the latest contributors to the Congressional committee. 11 C.F.R. 110.3(c) (4). The Senate committee will disclose the loan repayment on lines 19(a) and (c) and on Schedule C. Congressman Issa will then mark "termination report" on line 4(a) and proceed to request informal termination from the Commission.

We appreciate your attention to this matter and look forward to receiving your advice. Please do not hesitate to contact us should you have any questions.

Very truly yours,



Charles H. Bell, Jr.



Terry J. Martin

From: [Joseph Wenzinger](#)
To: [Eugene Lynch](#)
Subject: FW: Advisory Opinion Request
Date: Wednesday, June 06, 2018 10:38:27 AM

From: Charles H. Bell [mailto:cbell@bmhlaw.com]
Sent: Tuesday, June 05, 2018 5:11 PM
To: Joseph Wenzinger <JWenzinger@fec.gov>
Subject: RE: Advisory Opinion Request

Mr. Wenzinger –

Your email accurately reflects our request.

Thank you for your prompt attention.

Charles H. Bell, Jr.
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From: Joseph Wenzinger <JWenzinger@fec.gov>
Sent: Tuesday, June 5, 2018 2:05 PM
To: Charles H. Bell <cbell@bmhlaw.com>
Subject: Advisory Opinion Request

Mr. Bell,

Thank you for speaking with me yesterday regarding the advisory opinion request you have submitted on behalf of Congressman Darrell Issa. I have set out below my understanding of some of the information you provided. Please either confirm the accuracy of these statements or correct them.

1. In addition to the specific questions noted in the request, your client seeks confirmation that the plan for reporting the loan repayment, as described on page 4 of the request, complies with the Act and Commission regulations.
2. No portion of the loan at issue in the request was intended to be used for, or actually was used for, financing any recount activity.

I would appreciate your response by email. Your response may be considered to be part of the

advisory opinion request; if so, it will be posted as such on the Commission's website.

Sincerely,

Joseph Wenzinger
Attorney, Policy Division
Office of General Counsel
Federal Election Commission
(202) 694-1351

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