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AOR 2007-26

September 18, 2007

Thomasenia P. Duncan, Esq.
Federal Election Commission
Office of the General Counsel
999 E Street N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2007 SEP 25 P 4: 21

Re: Advisory Opinion Request

Dear Ms. Duncan:

This letter constitutes a request for an advisory opinion on behalf of our clients, Aaron Schock (a state officeholder, a one-time state candidate and current federal candidate), and the state campaign of Mr. Schock, regarding the use of funds in the state campaign account.

Factual Background

Mr. Schock is the State Representative for the 92nd District in Illinois. He was elected State Representative in 2004. He became a candidate for United States Congress on August 5, 2007

As a candidate for Illinois State Representative in 2004, Mr. Schock's campaign maintained a state campaign account into which he raised funds to support his candidacy. Mr. Schock's campaign has paid all of its expenses from the

2004 election. The account contains some surplus funds that, while compliant with Illinois law, were not raised in accordance with the contribution limits and source restrictions of the Federal Election Campaign Act (the "Act"). Other funds in the account are consistent with the Act's limits and prohibitions. Mr. Schock would like to donate these funds to several organizations, both within and outside Illinois. As he is now a federal candidate, Mr. Schock understands that the Act, as amended by the Bipartisan Campaign Reform Act ("BCRA"), may limit his ability to spend these funds.

Legal Framework

As amended, the Act and its implementing regulations generally prohibit federal candidates and officeholders, and entities they establish, finance, maintain, or control, from soliciting, receiving, directing, transferring, or spending funds in connection with an election for federal office unless the funds are "subject to the limitations, prohibitions, and reporting requirements" of the Act. 2 U.S.C. § 441i(e)(1)(A) (2003); see also 11 C.F.R. § 300.61 (2003). The Act similarly prohibits federal candidates and officeholders from spending funds in connection with nonfederal elections unless the funds are subject to the contribution limitations and source restrictions of the Act. 2 U.S.C. § 441i(e)(1)(B); 11 C.F.R. § 300.62.

However, the Act provides that the limitations of Section 441i(e)(1) do not apply to the spending of funds by a federal candidate or officeholder "who is or was also a candidate for State or local office." 2 U.S.C. § 441i(e)(2) (emphasis added). This statutory exemption notwithstanding, the Commission's rule interpreting the statute applies only to federal candidates and officeholders who are currently candidates for state or local office. See 11 C.F.R. § 300.63.

As Mr. Schock has operated his state campaign account in accordance with Illinois law, the account contains some funds that do not comply with the contribution limits and source restrictions of the Act. Illinois law allows state campaigns to accept contributions from corporations and individuals with no limits.

Mr. Schock and the state campaign would like to give the excess money to a number of organizations. Mr. Schock

and the state campaign ask the Commission to clarify whether he and/or the campaign may do so, and therefore asks the Commission the following questions:

1. May the state campaign give the funds remaining in the state campaign account, raised in connection with a state election, to Section 501(c)(3) charitable organizations?
2. May the state campaign give the funds remaining in the state campaign account, raised in connection with a state election, to state and local Republican party Committees?
3. May the state campaign give the funds remaining in the state campaign account, raised in connection with a state election, to other state candidates within the 18th Congressional District?
4. May the state campaign give the funds remaining in the state campaign account, raised in connection with a state election, to other state candidates outside the 18th Congressional District?
5. May the state campaign transfer the funds remaining in the state campaign account, raised in connection with a state election, to the successor Republican party candidate for Illinois' 92nd legislative district (the same election for which the funds were originally raised)?
6. May the state campaign give the funds remaining in the state campaign account, raised in connection with a state election, to candidates for local office with election dates separate from the date of Federal elections (*i.e.*, mayor, city council).
7. May the state campaign refund the funds remaining in the state campaign account, raised in connection with a state election, to the original contributors?
8. May the funds in the state campaign account remain there indefinitely, to be used in the event Mr. Schock may choose to run for state office again in the future?

Please do not hesitate to contact us should you have questions about this matter.

Respectfully,

A handwritten signature in black ink, consisting of a stylized 'D' followed by 'F.' and 'II'.

Donald F. McGahn II



Don McGahn
<donmcgahn@yahoo.com>
10/18/2007 11:24 PM

To RKatwan@fec.gov
cc
bcc

Subject Re: Advisory Opinion Request – Schock

History: This message has been replied to and forwarded.

This is a follow-up to our phone call, regarding your questions/request for clarification.

Regarding the length of his state legislative term, Mr. Schock was first elected in 2004, and re-elected in 2006.

Turning to each question about which you had a question:

1. The section 501(c)(3) charitable organizations would not conduct federal election activity. Nor would they have elections as their primary purpose.

5. Yes, Mr. Schock was a candidate for state office during the current election cycle. The funds in the state campaign account are both surplus and funds raised in connection with his 2008 re-election effort. We can confirm that only Mr. Schock or his opponent was referenced in connection with fundraising.

We can also confirm that Mr. Schock has no intent to continue to raise funds for state election. He ceased raising such funds prior to becoming a candidate for Federal office.

I hope this answers your questions. Please do not hesitate to contact me with further questions.

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