



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 10, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-57

R. Phillip Bledsoe, Treasurer
Buddy MacKay for Congress Campaign Fund
P.O. Box 206
Ocala, Florida 32678

Dear Mr. Bledsoe:

This responds to your letter of November 2, 1982, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use of excess campaign funds to pay for certain expenses of Congressman-elect MacKay.

Your letter states that the Buddy Mackay for Congress Campaign Fund ("the Committee") expects to defray certain expenses on behalf of Mr. MacKay and his "administrative staff" during the period between the general election and his taking the oath of office as a member of the 98th Congress. It is your intention to use excess funds remaining after retiring the Committee's campaign debts to pay these expenses. You explain that the expenses in question would be for travel by Mr. MacKay and his support staff to and from Washington, D.C. to attend the various orientation and training sessions of the Congress prior to taking the oath of office. In addition, you wish to use the excess funds of the Committee to pay the salaries of the support staff during this interim period.

You state that the excess funds remaining after retiring campaign debts and winding up the campaign may not be sufficient to cover all the expenses described above, and that the Committee is therefore looking for ways to fund these activities. You ask initially whether the use of the Committee's excess campaign funds to pay for the described expenses is permissible under the Act, and also whether the Committee may lawfully raise the additional funds necessary to pay for those expenses.

Under the Act, excess campaign funds may be used by a candidate or individual to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office, may be contributed to any organization described in 26 U.S.C. 170(c), or may be used for any lawful purpose, including transfers without limitation to any national, State, or local

committee of any political party. 2 U.S.C 439a, and see 11 CFR 113. While the Act permits use of excess campaign funds for "any lawful purpose," because Mr. MacKay was not a member of Congress on January 8, 1980, no personal use of the excess campaign funds may be made by him or any other person. 2 U.S.C. 439a. See also, Advisory Opinion 1980-113, copy enclosed. Furthermore, Commission regulations define the term "Federal officeholder" to mean "an individual elected to or serving in the office of ... Representative in" the Congress. 11 CFR 113.1(c). Thus, while Mr. MacKay has not yet been sworn in as a Member of the United States Congress, he is considered to be a "Federal officeholder" for purposes of 2 U.S.C. 439a and Part 113 of Commission regulations. See Advisory Opinion 1980-138, citing Re: AOR 1976-101.

The Commission has, in a previous advisory opinion, permitted a Federal officeholder to use excess campaign funds to pay for the kind of transition expenses described in your request. See Advisory Opinion 1980-138, copy enclosed. The Commission concluded that the expenses of maintaining an office and travel to and from Washington, D.C. were "incidental" to the individual's duties as a holder of Federal office, and therefore were permitted to be paid using excess campaign funds under 439a.

As to the second issue raised in your request, whether the Committee may raise the necessary additional funds to pay for the described expenses, the Commission notes that the Committee is permitted to continue receiving contributions and making expenditures or disbursements as an ongoing entity, subject to all applicable provisions of the Act and Commission regulations. If the Committee intends to do this, then upon receipt of contributions aggregating over \$5,000, and not designated for outstanding 1982 primary or general election debts, Mr. MacKay would become a "candidate" with respect to a 1984 primary or general election. As a candidate for reelection in 1984, Mr. MacKay would be required to file a statement of candidacy (FEC Form 2 or letter with same information) under 101.1 and 102.12 of the Commission's regulations.¹ See, 2 U.S.C. 431(2), and 11 CFR 100.3; see also Advisory Opinions 1977-11, and 1978-69, copies enclosed.

If the Committee and Mr. MacKay determine that the Committee will receive contributions and make expenditures with respect to his 1984 candidacy, the Committee would be permitted to spend the funds for the purposes described above.² Committee disbursements for Mr. MacKay's transition expenses would be reportable under the Act and regulations. 2 U.S.C. 434(b)(6)(A), 11 CFR 104.3(b)(2) and (b)(4).

¹ Contributions made with respect to Mr. MacKay's 1984 candidacy would be subject to the contributor's \$1,000 or \$5,000 per election limits for a 1984 election. See 2 U.S.C. 441a(a).

² As an alternative to establishing a 1984 reelection committee, the Act and regulations would also permit the creation of an office account for the donation and receipt of funds given for the purpose of supporting the activities of a Federal officeholder as an officeholder. 2 U.S.C. 439a and 11 CFR 113.3. So long as such funds in an office account are not used for the purpose of influencing an election, no reporting obligation to the Commission arises with respect to the receipt and disbursement of those funds. However, any contributions to or expenditures from an office account which are made for the purpose of influencing an election are subject to the provisions of 2 U.S.C. 441a and 11 CFR Part 110. 11 CFR 113.4(a), and see, 11 CFR 113.1(b).

The Commission expresses no opinion as to the applicability of the rules of the House of Representatives to the situation described in your request since those issues are outside its jurisdiction. See, in particular, Rule XLIII(6) and Rule XLV. You may also wish to seek assistance of the Clerk of the House with respect to the application of 2 U.S.C. 29a and 43b-2 to the situation presented here. Similarly, the Commission may not express any views concerning the income tax ramifications of the described expenses.

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.

Sincerely yours,

(signed)

Frank P. Reiche
Chairman for the Federal Election Commission

Enclosures (AOs 1980-113, 1980-138, 1977-11 and 1978-69)