



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

October 5, 1990

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1990-16

Robert T. Markowski  
Jenner & Block  
One IBM Plaza  
Chicago, IL 60611

Dear Mr. Markowski:

This responds to your letter dated August 2, 1990, requesting an advisory opinion on behalf of James R. Thompson, the Governor of the State of Illinois, and his campaign committee, Citizens for Thompson, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed transfer of funds from a state campaign committee to a Federal political committee.

You state that, in July 1975, Governor Thompson formed Citizens for Thompson ("CFT"), a state campaign committee organized under the laws of Illinois. CFT was the Governor's authorized campaign committee for his election as Governor in 1976 and his reelection in 1978, 1982, and 1986. In 1989, CFT's statement of purpose was expanded to provide that the committee is organized "for the purpose of supporting ... other candidates for state and local elective, appointive, and party offices ...." Newspaper reports have disclosed that Governor Thompson announced in 1989 that he was not seeking reelection.

You state that CFT has conducted fundraising activities since 1975 and, as of July 1990, has a balance exceeding \$1 million. You state that "a substantial portion of this amount" was raised from contributions not exceeding \$1,000 from individuals and that the remainder was raised from corporations, labor unions, and individuals contributing more than \$1,000.<sup>1/</sup>

Governor Thompson has recently established a Federal nonconnected political committee to support a number of candidates for Federal office. The Statement of Organization for this committee, named "The America 2000 Fund" ("America 2000"), was received at the Commission on August 2, 1990. Governor Thompson wishes to transfer funds from CFT to

America 2000. You state that, with respect to each transfer, CFT will demonstrate through reasonable accounting methods that it has sufficient funds obtained through individual contributions not exceeding \$1,000 to make the transfer. Initially, CFT proposes to transfer approximately \$25,000 to America 2000.

You ask whether CFT may make unlimited transfers of permissible funds to America 2000. You also wish to know whether, if such transfers are permissible, America 2000 may count toward the contributor requirement for becoming a multicandidate committee those persons who were the original sources of the funds transferred.

Commission regulations provide that transfers of funds may be made without limit on amount between affiliated committees whether or not they are political committees under the Act. 11 CFR 102.6(a)(1), 110.3(c)(1). Included within the definition of affiliated committees are committees established, financed, maintained, or controlled by the same person or group of persons. 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2), 100.5(g)(3)(v), 110.3(a)(1)(ii) and 110.3(a)(2)(v). The situation presented by you essentially involves the proposed transfer of funds from a state campaign committee supporting a number of non-Federal candidates and committees to a political committee that wishes to support a number of Federal candidates. Both committees are controlled by Governor Thompson for campaign-related purposes and are, therefore, affiliated committees. See Advisory Opinions 1987-12 and 1984-46. As such, the state campaign committee, CFT, may make transfers to America 2000 that are not subject to the limits of 2 U.S.C. 441a and 11 CFR 110.1.

According to the Act, a committee which receives contributions aggregating in excess of \$1,000 during a calendar year, or which makes expenditures in excess of \$1,000 during a calendar year, is a political committee. 2 U.S.C. 431(4); 11 CFR 100.5(a). The terms "contribution" and "expenditure" include any gift, payment, distribution, advance, or deposit of money or anything of value "for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A)(i) and 431(9)(A)(i); 11 CFR 100.7(a)(1) and 100.8(a)(1).

By making transfers exceeding \$1,000 in a calendar year to America 2000, CFT will become a political committee. 2 U.S.C. 431(4); 11 CFR 100.5(a). However, CFT may qualify as a political committee even before making such transfers, i.e., if CFT disburses in excess of \$1,000 in a calendar year to solicit funds that it intends to transfer to America 2000 or if it receives in excess of \$1,000 in response to solicitations informing contributors that such funds may be transferred to America 2000 or otherwise used for Federal purposes.

Upon achieving political committee status, CFT would be required to register and report as a political committee, disclosing on its first report the sources of the funds in its accounts when it became a political committee. See 11 CFR 104.12. This cash on hand would be presumed to be composed of those contributions most recently received by CFT prior to the transfer, and CFT would have to itemize such prior contributions to the extent required by the Act. 11 CFR 104.12. 2 U.S.C. 434(b); 11 CFR 104.3(a). CFT would be required to exclude from the amount of cash on hand any funds not permissible under the Act, i.e., contributions from corporations, labor organizations, and Federal contractors.<sup>2/</sup> CFT would also be required to exclude contributions from individuals and committees which, when aggregated for each donor, exceed the \$5,000

limit per donor for contributions to political committees that are not authorized committees or national party committees.<sup>3/</sup> No funds required to be excluded from cash on hand may be included in any proposed transfer to America 2000. 2 U.S.C. 441b, 441c, 441a(a)(1)(C), and 441a(a)(2)(C). Advisory Opinions 1985-2, 1984-46, and 1982-52. See 11 CFR 104.12 and 102.6(a)(1)(iv).

Since funds not permissible under the Act may not be combined with permissible funds of a political committee, the impermissible funds must be transferred out of CFT's account within 10 days of CFT becoming a political committee. See 11 CFR 103.3(b).<sup>4/</sup> Because the impermissible funds are being purged from CFT's account, CFT would not be required to disclose the impermissible funds. Rather, the cash on hand would consist of those permissible contributions and receipts remaining. In addition, since the funds of the beginning cash on hand, although originally contributed for state campaign purposes, will now be used for Federal activity, the persons contributing those funds should be notified that their contributions will be subject to the limitations and prohibitions of the Act. See 11 CFR 102.5(a)(2). See Advisory Opinion 1985-18.

For the permissibility of including funds from state committees contributing to CFT that are not political committees and that may themselves have funds from impermissible sources, see Advisory Opinion 1983-34.

In practice, the cash on hand would be determined as follows: If CFT has \$1 million cash on hand when it becomes a political committee, but \$200,000 of the most recently received \$1 million is from prohibited sources, then CFT is left, preliminarily, with \$800,000 cash on hand. In addition, if some of the aggregate contributions from individuals exceeded \$5,000, and the total of the amounts in excess of \$5,000 per donor is another \$100,000, then that figure should also be subtracted, leaving \$700,000. Finally, the total of contributions from persons to whom a 102.5(a)(2) notification has not been sent also should be subtracted. The contributions comprising this total must be itemized in accordance with the requirements of 2 U.S.C. 434(b) and listed as the beginning cash on hand for the first report. See Advisory Opinions 1985-2, 1984-46, and 1982-52.

Your request indicates that CFT proposes to make an initial transfer of \$25,000 and then continue to make transfers to America 2000. It appears, therefore, that CFT will continue as a political committee after the initial transfer. In addition, there is no indication from your request that CFT will cease to raise funds for non-Federal activities. Under 11 CFR 102.5(a)(1), an organization that qualifies as a political committee and that finances political activity in connection with both Federal and non-Federal elections has the affirmative duty to adopt one of two accounting plans. Advisory Opinion 1988-33.

The first plan entails the establishment of a Federal account in a depository in accordance with 11 CFR 103.2. This account will be treated as a separate Federal political committee that must comply with all of the requirements of the Act. Only funds subject to the Act's prohibitions and limitations may be deposited in such an account. All disbursements, contributions, expenditures, and transfers by the committee in connection with any Federal election must be made from this account. Furthermore, no transfers may be made to this account from any other account maintained by the organization for non-Federal purposes. 11 CFR 102.5(a)(1)(i). The second

plan entails the establishment of one political committee that shall receive only contributions subject to the Act's limitations and prohibitions regardless of whether the committee makes disbursements (including contributions) with respect to both Federal and non-Federal elections. 11 CFR 102.5(a)(1)(ii).

Assuming CFT proceeds with its proposed activity and registers as a Federal political committee, it shall either comply with the first plan and maintain the impermissible funds in a separate non-Federal account, or comply with the second plan and divest itself of the impermissible funds so that such funds are used only for purposes other than influencing any Federal election. In either event, the Federal political committee may only raise contributions that are designated for the Federal account (whether the separate account or the committee in the second option), that result from a solicitation expressly stating that the contribution will be used in connection with a Federal election, and that come from contributors who are informed that all contributions are subject to the limitations and prohibitions of the Act. 11 CFR 102.5(a)(2).

Therefore, if CFT wishes to continue to raise funds for use with respect to non-Federal elections that are not subject to the limitations and prohibitions of the Act, it must do so in accordance with the plan set forth in 11 CFR 102.5(a)(1)(i). In addition, if CFT chooses the first plan, it may not transfer funds from any non-Federal account to any Federal account for subsequent transfer to America 2000. 11 CFR 102.5(a)(1)(i). CFT may, however, continue to make transfers to America 2000 from those funds comprising its beginning cash on hand as a "political committee" since those funds must be brought into compliance with the Act and Commission regulations.

You ask whether America 2000, for purposes of meeting the qualifications for a multicandidate committee, may count as contributors those persons who are the original sources of the funds transferred by CFT.

Under the Act and Commission regulations, a multicandidate political committee is a political committee which has been registered for not less than six months, which has received contributions from more than 50 persons, and which (except for any State political party organization) has made contributions to five or more Federal candidates. 2 U.S.C. 441a(a)(4); 11 CFR 100.5(e)(3). Contributions by a multicandidate committee are subject to the limits of 2 U.S.C. 441a(a)(2), rather than 441a(a)(1), thus enabling it to contribute \$5,000, rather than \$1,000, to a Federal candidate with respect to an election.<sup>5/</sup>

In prior opinions, the Commission has concluded that, since all affiliated political committees share a single contribution limit and may make unlimited transfers among themselves, a newly created political committee that becomes affiliated with a pre-existing multicandidate committee qualifies for treatment as a multicandidate committee. Advisory Opinions 1986-42 and 1983-19. Accordingly, the Commission has permitted two affiliated political committees to rely on the contributions made and received by either one, along with the period of FEC registration of the older committee, to achieve multicandidate committee status. Advisory Opinion 1980-40. In addition, the Commission, in permitting the conversion of a principal campaign committee into a potential multicandidate committee, has determined that the transformed committee may avail itself of the period of registration of the principal campaign committee and the number of contributions received and made by the principal campaign committee. Advisory Opinions 1985-

30 and 1982-32. See Advisory Opinions 1988-41 and 1987-11. Those persons who have been notified that their CFT donations are subject to Federal limitations and prohibitions can be viewed as having had their non-Federal donations converted to CFT Federal contributions. Accordingly, the Commission concludes that such persons may be counted toward the 51 contributor requirement to enable America 2000 to achieve multicandidate committee status.

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,

(signed)

Lee Ann Elliott  
Chairman for the Federal Election Commission

Enclosures (AOs 1988-41, 1988-33, 1987-12, 1987-11, 1986-42, 1985-30, 1985-18, 1985-2, 1984-46, 1983-34, 1983-19, 1982-52, 1982-32, and 1980-40)

1/ Individual contributions exceeding \$1,000 and contributions from corporations and labor unions are, with certain exceptions, permissible under Illinois law. Illinois Revised Statutes, ch. 46, 9-1, et seq.

2/ Presumably, CFT, regardless of its present non-Federal status, has not received contributions from national banks, corporations organized by authority of any law of Congress, or foreign nationals. Such entities are forbidden from making both Federal and non-Federal contributions. 2 U.S.C. 441b(a) and 441e.

3/ Such aggregation shall occur for contributions to CFT regardless of whether they were made in 1990 (presumably the year of the transfer) or in previous years. The first year of CFT's existence as a Federal committee will be the year that such funds are received for the purposes of Federal activity. Additionally, as a result of the affiliated status of CFT and America 2000, those whose transferable donations to CFT reached \$5,000 may not contribute to either America 2000 or CFT, for Federal purposes, during the remainder of 1990 (and those whose transferable donations are less than \$5,000 may only contribute up to that amount to both committees in 1990). 11 CFR 110.3(a)(1).

For the permissibility of including funds from state committees contributing to CFT that are not political committees and that may themselves have funds from impermissible sources, see Advisory Opinion 1983-34.

4/ The Commission would not extend the requirement to actually transfer out the impermissible funds from CFT if CFT were transferring funds on a one-time basis and then terminating its political committee status. CFT, however, apparently intends to continue as a political

committee. (See discussion below as to Federal and non-Federal accounts under 11 CFR 102.5(a)(1).)

5/ Multicandidate committee status, however, limits the committee's contributions to a national party committee to \$15,000 in a calendar year, rather than \$20,000.