



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

January 27, 2005

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2004-45

Marc E. Elias, Esq.  
Rebecca H. Gordon, Esq.  
Perkins Coie  
607 Fourteenth Street, NW  
Washington, DC 20005-2011

Dear Mr. Elias and Ms. Gordon:

We are responding to your inquiry on behalf of Senator Ken Salazar and his principal campaign committee, Salazar for Senate (the “Salazar Committee”) regarding the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations, to the Salazar Committee’s spending of contributions it raised during the 2004 election cycle under increased contribution limits pursuant to the “Millionaires’ Amendment.” *See* 2 U.S.C. 441a-1 and 441a(i); 11 CFR Part 400. The Salazar Committee may use a last-in, first-out method of accounting to determine whether, now that the election is over, any of those contributions constitute “excess contributions” that must be returned to contributors.

***Background***

The facts of this request are presented in your letter dated December 14, 2004.

Senator Salazar was the Democratic candidate for the Senate from Colorado in the 2004 general election. His Republican opponent in that election was Peter Coors. On October 23, 2004, Mr. Coors’s principal campaign committee, Pete Coors for Senate, Inc. (the “Coors Committee”), filed with the Secretary of the Senate an Initial Notification of Expenditures from Personal Funds on FEC Form 10, indicating that Mr. Coors had spent \$1,051,000 from personal funds in connection with his general election campaign. The Salazar Committee received a copy of this filing that evening.

As the provisions of the Millionaires' Amendment permit, the Salazar Committee began raising funds from individuals under an increased contribution limit of \$6,000 on October 24, 2004. From that date through November 2, 2004 – the date of the general election – the Salazar Committee raised \$1,308,533 in contributions. Of this amount, \$564,046 was attributable to the portion of individual contributions raised pursuant to the Millionaires' Amendment that exceeded the normal \$2,000 limit.

Between October 24 and December 6, 2004, the Salazar Committee paid \$1,610,641 in campaign expenses in connection with the 2004 general election. As of December 6, 2004, over \$100,000 in 2004 general election expenses remained outstanding and were being processed for payment. The Salazar Committee intends to use a "last-in, first-out" ("LIFO") method of accounting to determine whether any of its remaining cash-on-hand is comprised of funds that were contributed under the increased limits provided for by the Millionaires' Amendment.

### ***Questions Presented***

*1. May the Salazar Committee use a LIFO method of accounting to determine whether it has "excess contributions" that must be refunded to contributors?*

### ***Legal Analysis and Conclusions***

Yes, the Salazar Committee may use the LIFO method of accounting, a generally accepted accounting principle, to determine whether it has "excess contributions" that must be refunded to contributors.

The Act and Commission regulations require candidates receiving increased contributions under the Millionaires' Amendment to refund, within fifty days of the election, all "excess contributions" that are not spent in connection with that election. 2 U.S.C. 441a(i)(3) and 441a-1(a)(4); 11 CFR 400.51 and 400.53. An "excess contribution" is the amount of each contribution raised in an amount above the usual \$2,000 limit that is not otherwise spent "in connection with the election" to which it relates. 11 CFR 400.50. Neither the Act nor Commission regulations specify a particular accounting method that candidate committees must use to determine whether their remaining cash-on-hand after an election contains any excess contributions. Because LIFO is a generally accepted accounting principle, the Commission concludes that the Salazar Committee may use this method for the purpose of determining whether its remaining cash-on-hand after the election contains any excess contributions.

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* 2 U.S.C. 437f. 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.

Sincerely,

(signed)

Scott E. Thomas  
Chairman