

## ADVISORY OPINION 1975-39

### Settlement of Campaign Debts Owed to Corporations

The Federal Election Commission renders this advisory opinion under 2 U.S.C. §437f in response to a request submitted by Mr. Melvin S. Schwarzwald on behalf of the Metzenbaum Post-Campaign Committee. This request was made public by the Commission and published in the Federal Register on September 3, 1975 (40 FR 40676). Interested parties were given an opportunity to submit comments relating to the request. One comment was received.

The requesting party seeks an advisory opinion as to whether a candidate's committee, which incurred debts during the 1974 senatorial campaign, may settle those debts with corporate or non-corporate creditors, if the committee has made a serious effort to bring down the amount of said debts since the date of the election and has little likelihood of raising additional funds sufficient to pay all debts in full.

After the 1974 election, the Metzenbaum campaign had outstanding debts of \$113,000, but subsequently decreased that debt to approximately \$79,000. The Committee expresses concern that, in view of Advisory Opinions 1975-5 and 1975-6, (40 FR 31316, July 25, 1975), cash settlements with corporate creditors may constitute violations of 18 U.S.C. § 610 or § 611. Advisory Opinion 1975-6 stated that "if the creditor is a national bank, corporation, labor organization, or government contractor, cancellation of the debt may be a 'contribution' of the type that has been prohibited under 18 U.S.C. §610 and §611 for many years."

However, in Advisory Opinion 1975-50 (40 FR \_\_\_\_\_, December 16, 1975) the Commission set forth the conditions under which debts owed by political committees to corporations could be settled without being regarded as a corporate contribution in violation 18 U.S.C. §610. The Commission stated:

"The final question concerns the application of 18 U.S.C. 610 to the settlement or forgiveness of debts owed by a candidate or Political committee to corporations. In general, a corporation may not forgive prior debts or settle these debts for less than the amount owed by the candidate or committee, because settlement or forgiveness of a corporate debt is a contribution under §610. However, in certain extenuating circumstances (which shall be subject to Commission scrutiny on a case by case basis), settlement or forgiveness of such a corporate debt may not be considered a contribution under §610 if a showing is made to the Commission that the corporate creditor has treated the outstanding debt of a candidate or political committee in a commercially reasonable manner.

"Such a showing must include at least the following:

"(1) That the initial extension of credit to the candidate or political committee was made in a manner and on terms similar to extensions of credit to a non-political debtor or in accordance with regulations prescribed by a regulatory Board or commission pursuant to 2 U.S.C. §451;

"(2) That the candidate or political committee has undertaken an exhaustive effort to satisfy the outstanding debt; and

"(3) The corporate creditor has pursued its remedies in a manner similar in intensity to that employed in pursuit of a non-political debtor."

Should the Metzenbaum Committee wish to settle a corporate contribution, the Committee and the corporation must make a showing that, at the minimum, the above criteria have been met.

The Commission recently concluded in Advisory Opinion 1975-82 (40 FR \_\_\_\_\_, December \_\_\_\_, 1975) that contributions to retire pre-1975 campaign debts could be solicited, received, and expended for that purpose after December 31, 1975, without regard to the limits in 18 U.S.C. §608(b) and (c). The opinion set forth several restrictions on fundraising efforts to retire debts incurred with respect to 1974, and earlier, elections. The Metzenbaum Post-Campaign Committee is generally referred to AO 1975-82 as applicable to its situation. In view of the Commission's policy reflected in that opinion, the Committee must obviously undertake additional efforts to retire its outstanding debts before corporate creditors can properly settle or forgive debts owed to them. AO 1975-50, supra.

This advisory opinion is issued on an interim basis only pending promulgation by the Commission of rules and regulations or policy statements of general applicability.