

ADVISORY OPINION 1975-64

Solicitations for Fundraising Event to Retire 1972 Campaign Debt and 1973-74 Deficit in Office Expense Account

This advisory opinion is rendered under 2 U.S.C. §437f in response to a request for an advisory opinion submitted by Congressman Charles Wilson, from Texas, and published in the September 18, 1975 Federal Register (40 FR 43167). Interested parties were given an opportunity to submit written comments relating to the request. No comments were received.

The question raised in Congressman Wilson's request is whether or not he may retire a 1972 campaign deficit and a 1973-74 deficit for office expenses with a single fundraiser, and if so, should the solicitation for the fundraiser clearly indicate that the funds contributed will be used to defray both the campaign and office expense deficits.

The Commission has previously issued Advisory Opinions 1975-5 and 1975-6 (40 FR 31316, July 25, 1975), an Interim Guideline on the Reporting of Debts and Obligations (40 FR 32950, August 5, 1975) and a Policy Statement on Pre-1975 Campaign Debts (40 FR 32952, August 5, 1975). These publications point out generally that the limits in 18 U.S.C. §608 do not apply to contributions and expenditures related only to retiring past campaign debts. However, solicitations for such restricted contributions must disclose the purpose for which the contribution is to be used and must inform the donor of the need to earmark the contribution in writing as by notation on the check, restricting its use to retiring past (pre-1975) campaign debts. The restricted contributions are required to be made before December 31, 1975, to avoid their possible attribution to, and charge against, the contribution limits applicable to elections held after January 1, 1975. Contributions made solely to retire the 1972 campaign debt and expenditures made solely for that purpose are required to be reported separately from contributions and expenditures relating to an election occurring after January 1, 1975. To the extent that Congressman Wilson's fundraising activity relates to retiring a 1972 campaign deficit, it must conform to the foregoing requirements.

Under 2 U.S.C. §439a a holder of Federal office may accept contributions for the purpose of defraying "any ordinary and necessary expenses incurred by him in connection with his duties as a holder of Federal office * * *" The receipt and expenditure of such funds is to be reported in accordance with rules which the Commission will promulgate in the future. Accurate records should be maintained for this purpose. In view of 2 U.S.C. SS 439a the Commission concludes that Congressman Wilson may concurrently raise funds to retire a 1972 campaign debt and "a 1973-74 deficit for office expenses which were not reimbursed." The Commission understands the quoted language to mean that the office expenses in question were previously paid from the Congressman's personal funds and that the amounts paid were not subsequently reimbursed to the Congressman from appropriated funds, campaign funds, or any other source.

However, all solicitations for the dual fundraising effort should identify both purposes and indicate that contributions are to be restricted to only those purposes to avoid the possible application of 18 U.S.C. SS 608. Any funds received in excess of the amounts needed to retire the two deficits would have to be returned to the donors to avoid application of the limits in 18 U.S.C. §608.

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