3 AUG 1976

Re: AOR 1976-10

Honorable Gene Snyder
House of Representatives
Washington, D.C. 20515

Dear Mr. Snyder:

This is in response to your letter of April 1, 1976, requesting an opinion regarding the effect of a recently enacted Kentucky statute on the Federal Election Campaign Act of 1971, as amended (the "Act").

Your principal concern was the language of the State statute which provides that a candidate's unexpended campaign funds must be returned to the contributors or to the candidate's party. You inquired as to the application of the State statute in view of 2 U.S.C. §439a which governs the use of a Federal candidate's excess campaign funds and amounts given to a Federal officeholder and 2 U.S.C. §453 which provides that the Act supersedes and preempts "any provision of State law with respect to election to Federal office."

The General Counsel of the Commission addressed the matter of Federal preemption of State election law in an opinion of counsel, OC 1975-14, 41 Fed. Reg. 3990 (January 27, 1976), a copy of which is enclosed. The Commission concurs with that opinion of counsel and refers you to its language.

The Kentucky statute requires that any unexpended campaign funds "be returned pro rata to all contributors or be transferred to the executive committee of the political party of which the candidate is a member." Section 439a of Title 2, United States Code, however, expressly provides that Federal candidates may use excess contributions for such persons as supporting their activities as Federal officeholders (if applicable), contributing to charity, or "any other law purpose." The legislative history of §439a cites several examples of "lawful" uses. See 120 Cong. Rec. H10335 (daily ed., Oct. 10, 1974). In proposed regulations recently approved by the Commission to implement this section, other examples of lawful uses are contributions to a political party or to another candidate (see §113.2 of the office account regulation, copy enclosed).

By prohibiting the use of excess campaign funds for support of Federal officeholder activities, for contributions to charities or other candidates, and for other purposes specified in the Commission's proposed regulations, the Kentucky statute directly conflicts with the Federal provision. Because of that conflict and because of the express intention of Congress to occupy the field with respect to Federal elections, the Commission holds that the subject Kentucky statute is superseded and does not apply to

excess campaign funds accumulated by Federal candidates or their authorized committees to the extent that a Federal officeholder uses those funds for a purpose specifically permitted by §439a and proposed regulations of the Commission. The State statute would, however, apply to the extent that excess funds are proposed to be expended for any purpose other than those specifically enumerated in §439a and the Commission's proposed regulations. We note that the proposed regulations of the Commission must be submitted to the Congress and may be prescribed in final form only if neither the House nor the Senate disapproves within 30 legislative days from the date they receive the proposed regulations. 2 U.S.C. §438(c).

This response relates to your opinion request but may be regarded as informational only and not as an advisory opinion since it is based in part on proposed regulations of the Commission which must be submitted to Congress. It is the Commission's view that no enforcement or compliance action should be initiated in this matter if your actions conform to the conclusions and views stated in this letter.

Sincerely yours,

(signed)
Vernon W. Thomson
Chairman for the
Federal Election Commission

Enclosures