FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 14, 1978

AO 1978-1

Mr. Ronald D. Eastman
Verner, Liipfert, Bernhard and McPherson
1660 L Street, N.W.
Suite 1000
Washington, D.C. 20036

Dear Mr. Eastman:

This responds to your letter of December 30, 1977, which requests an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to contributions to the Democratic National Committee ("the DNC") for the purpose of retiring DNC's pre-1975 debt.

Your letter indicates that the major portion of the outstanding debt consists of obligations the DNC assumed in 1969 and 1970 from the Hubert H. Humphrey and Robert F. Kennedy presidential campaigns of 1968. The remainder of the debt accrued to the DNC between 1972 and 1974. The DNC is planning a fundraising effort to retire this debt and asks the opinion of the Federal Election Commission ("the Commission") on three questions:

1. May an individual contribute more than $20,000 in a calendar year to the DNC for the purpose of retiring debts incurred or assumed by the DNC prior to January 1, 1975? May a multi-candidate political committee contribute more than $15,000 in a calendar year for the same purpose?

2. Assume an individual or a multi-candidate political committee has already contributed $20,000 or $15,000 (respectively) to the DNC during the calendar year for post-January 1, 1975 purposes. May that individual or multicandidate political committee contribute additional amounts -- which may or may not be in excess of the usual post-January 1, 1975 limitations -- for the purpose of retiring the DNC's pre-1975 debt?

3. Assume an individual contributes $25,000 during a calendar year to a combination of the DNC and federal candidates. May that individual contribute

additional amounts [to the DNC] -- which may or may not be in excess of $20,000 -- during the same calendar year for the purpose or retiring the DNC's pre-1975 debt?

These questions raise again, in somewhat modified form, one of the earliest issues the Commission was asked to address when it first began in 1975: whether contribution limits which were first put into effect January 1, 1975, apply to contributions made after that date to retire debts which were incurred in elections held before January 1, 1975.

Advisory Opinions 1975-5 and 1975-6, both decided in July 1975, and Advisory Opinion 1975-82, decided in December 1975, involved contribution limits applicable to candidates and their committees, and individual aggregate contribution limits of $25,000 per year. The conclusions reached in those Advisory Opinions were codified in Commission regulations, which were sent to Congress for review, and formally prescribed on April 13, 1977. The regulations in 11 CFR 110.1(g) provide:

> (1) Contributions made to retire debts resulting from elections held prior to January 1, 1975 are not subject to the limitations of this Part 110 as long as contributions and solicitations to retire these debts are clearly designated and used for that purpose.
>
> (2) Contributions made to retire debts resulting from elections held after December 31, 1974 are subject to the limitations of this Part 110.

In those early opinions, the Commission also set forth numerous requirements for separate contributor designation, separate record-keeping, and separate reporting to insure that contributions to retire pre-1975 debts not subject to limitations were segregated from contributions for post-January 1, 1975 elections to which the limits did apply.

Your questions present the same issue with different facts: the contributions are made to a national party committee for pre-1975 election debts, and new limits became effective May 11, 1976, on contributions to national party committees. As amended May 11, 1976, the Act imposes specific limitations of $20,000 (for an individual) and $15,000 (for a multicandidate committee) on the aggregate contributions which may be made in any calendar year to the political committees of a national political party. 2 U.S.C. 441a(a)(1)(B) and (2)(B). However, those provisions of the Act were not effective prior to May 11, 1976, and the Commission's past position (as described above) with respect to the limits effective January 1, 1975, has been that, assuming conformity with particular procedures, contributions made for the sole purpose of retiring campaign debts resulting from elections held before January 1, 1975, are not subject to the limits of the Act.

Thus, the Commission concludes that the quoted regulation also applies to your three questions which are answered in the affirmative provided the following conditions and procedures relating to separate notice, designation, record-keeping and reporting as regards contributions to retire pre-1975 election debts, and contributions relating to elections after January 1, 1975, are strictly adhered to:

(1) All DNC solicitations for contributions to retire its pre-1975 debt must include clear notice of the DNC's intended use of those contributions.

(2) All contributors for the pre-1975 debts must expressly earmark their contribution (e.g., a notation on a check) for use to retire the pre-1975 debt.

(3) Contributions designated to retire the pre-1975 debt must be received into and expended out of accounts that are separate from accounts used for other general party purposes.

(4) No transfers of the designated contributions may be made between the pre-1975 debt contribution accounts and other DNC accounts.

(5) Contributions and expenditures made in connection with its efforts to retire the pre-1975 debt must be recorded and reported by the DNC in accordance with all applicable provisions of the Act and Commission regulations. 2 U.S.C. 432, 434; 11 CFR 102, 104.

(6) The DNC must report the pre-1975 debt on a separate Schedule C giving complete details as to each outstanding obligation and the candidate on whose behalf each debt was assumed.

(7) Separately identified Schedule A's must be filed to disclose each contribution, designated for the outstanding pre-1975 debt, in an amount requiring itemized disclosure under the Act and regulations.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. 437.

Sincerely yours,

(signed)
Thomas E. Harris
Chairman for the
Federal Election Commission