



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 9, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-147

Mr. Robert D. Hunter, Treasurer
Yearout Campaign Committee
1700 First Alabama Bank Building
Birmingham, Alabama 35203

Dear Mr. Hunter:

This responds to your letter of December 23, 1980, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the proper disposition of funds held by the Yearout Campaign Committee ("the Committee") which were originally donated by the candidate, J. Gusty Yearout, to enable the Committee to make contribution refunds.

According to your letter, Mr. Yearout withdrew from the 1980 Senate race in Alabama in May of 1980. In August of 1980, the Committee determined that its excess campaign funds could be refunded to the contributors and that 75% of each contribution would be returned. You state, however, that in order for each contributor to receive the 75% refund, the candidate donated \$12,139.93 to the Committee. This donation was in addition to some \$8,200 that Mr. Yearout had loaned the Committee and then forgave. You state further that the candidate's funds (\$12,139.93) were given when the Committee had no debts and for the sole purpose of enabling the Committee to refund 75% of each contribution. Since not every contributor cashed the refund checks, issued on August 27, 1980, the Committee now has a cash balance of \$5,651.25. You also indicate that the full amount donated by Mr. Yearout would not have been necessary if the Committee had known that over \$5,000 of the refunds would be rejected.

You ask specifically if the Committee could return the \$5,651.25 to the candidate, since you believe it would be impractical to make another pro rata refund to the contributors. It is the opinion of the Commission that the \$5,651.25 may be used to repay the candidate for funds he originally donated to enable the Committee to make contribution refunds. In the circumstances presented this use would not be a conversion to personal use of excess campaign funds prohibited by 2 U.S.C. 439a.

The Commission believes it is significant that the \$5,651 presently held by the Committee is substantially less than the amount of a loan (\$8200) that Mr. Yearout previously made and then forgave with a view to permitting the Committee to terminate pursuant to the Act without any outstanding debts or obligations. This situation is thus analogous to Advisory Opinion 1980-114 (copy enclosed) wherein a principal campaign committee that had terminated its reporting status under the Act and regulations was allowed to amend its termination report, accept a vendor refund, and revive part of a loan previously forgiven by its former candidate with the result that he received the refund.

In this case the Committee has not yet terminated its reporting status under the Act. Also, the amount provided by Mr. Yearout from personal funds after all debts were paid (or forgiven in the case of the \$8,200 loan made by Mr. Yearout) was donated several months after he had withdrawn from the race and for the sole purpose of making contribution refunds. Accordingly, the Commission does not believe that Mr. Yearout would be receiving excess campaign funds for a personal use in these circumstances. It would therefore be permissible under the Act for the \$5,651.25 to be refunded to Mr. Yearout. The refund is, of course, subject to the reporting requirements of the Act. 2 U.S.C. 434, 11 CFR 104.3(b); also see 11 CFR 102.3.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosure (AO 1980-114)