



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 17, 1986

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-38

Lance H. Olsen, Esquire
Olson, Connelly & Hagel
431 J. Street, Fourth Floor
Sacramento, California 95814

Dear Mr. Olsen:

This responds to your letter of November 18, 1985, which requests an advisory opinion on behalf of Congressman Vic Fazio concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the establishment of a committee whose primary purpose would be to support state and local candidates throughout the United States.

Your letter states that Congressman Fazio currently has a principal campaign committee, Fazio for Congress Committee, and an authorized committee, Congressman Fazio Campaign Committee. You state that Congressman Fazio would like to establish a third committee, the state committee, which would primarily support state and local candidates and make charitable contributions as authorized by state law. The State committee would not be involved in making expenditures on behalf of the Congressman's re-election efforts; nor would it support other candidates for Federal office. Congressman Fazio anticipates registering the state committee in the State of California and receiving corporate and union funds as well as funds in excess of limitations of the Act. You state that all such funds are permissible under California law.

Your request asks four questions concerning the proposed state committee activities:

1. Must such a committee register with the Clerk of the House?
2. Would such a committee be subject to the contribution limitations and prohibitions as contained in the Federal Election Campaign Act?

3. Could Congressman Fazio's name be used in the name of the committee registered with the State of California pursuant to State of California statutes?

4. Would the advice given to the above three questions be affected in any way if any transfers were to take place between Congressman Fazio's authorized committees registered with the Clerk of the House and his proposed state committee?

A "political committee" is defined as "any committee ... which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." 2 U.S.C. 431(4) and 11 CFR 100.5. The definitions of contribution and expenditure include gifts, loans, payments and other transactions made for the purpose of influencing any election for Federal office. See generally 2 U.S.C. 431(8), (9) and 11 CFR 100.7, 100.8.

The state committee as described in your request would not be a "political committee" under the Act and regulations if its activity is exclusively limited to financing only state and local elections and making charitable contributions on behalf of the state committee. (See the discussion below in response to question three.) Assuming the state committee's activity is limited in this respect, it would not be required to register or file reports with the Clerk of the House of Representatives and would not be subject to the corporate and labor organization prohibitions or the contribution limitations of the Act.¹ This responds to questions one and two.

Question three raises the question of using Congressman Fazio's name. Under 2 U.S.C. 432(e)(4) and 11 CFR 102.14, the name of an authorized committee is required to include the name of the Federal candidate who authorized the committee. In addition, 432(e)(4) prohibits a political committee, which is not authorized, from including the name of any Federal candidate in its name. This section applies to entities which qualify as political committees under 2 U.S.C. 431(4). Assuming the state committee is not a political committee, the use of Mr. Fazio's name in the committee name would not come within the purview of 2 U.S.C. 432(e)(4). The Commission notes, however, that state committee references to Congressman Fazio's re-election as a member of Congress or to his candidacy for any Federal office would be viewed as something of value to his Federal campaign, and thus result in the making of a contribution or expenditure under 2 U.S.C. 431(8) and (9). State committee references to Congressman Fazio in connection with its fundraising efforts, general public advertising or charitable donations, may or may not result in a contribution to his Federal campaign, depending upon all the facts and circumstances in a given situation. See Advisory Opinions 1983-12 and 1982-56 and the opinions cited therein. A reference to Congressman Fazio in the name of the state committee would not in itself result in a contribution to his re-election campaign.

Your fourth question concerns the transfer of funds from Congressman Fazio's authorized committees to the state committee and its impact on the answers to your other questions. With certain exceptions not relevant to the facts presented here, the Act and regulations do not limit donations or payments made by a political committee to entities other than political committees or Federal candidates.² Therefore, the Commission concludes that disbursements from the Fazio authorized committees to the state committee would not change the answers to the above questions, provided the state committee restricts its use of such funds, and all other funds, to

charitable donations and the financing of State and local elections, and does not disburse them for any Federal election activity. See Advisory Opinion 1983-42. However, the disbursement should be reported by the authorized committees as required by 2 U.S.C. 434(b) and 11 CFR 104.3.

Since your request indicates that the state committee "would not be involved in any way with making expenditures" for Congressman Fazio's reelection or in supporting other Federal candidates, this opinion does not address the transfer of funds from the state committee to Congressman Fazio's authorized committees. See Advisory Opinion 1984-46 and opinions cited therein.

The Commission expresses no opinion regarding possible application of any State law, House rules, or tax ramifications to the described activity, since those issues are not within its jurisdictions.

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)

Joan D. Aikens
Chairman for the Federal Election Commission

Enclosure (AO's 1984-62, 1984-46, 1983-42, 1983-12, and 1982-56)

1. The state committee would also not be subject to the prohibition on Government contractor contributions. 2 U.S.C. 441c. It would, however, be barred from accepting contributions from national banks, corporations organized by authority of a law of Congress (federally chartered savings and loan institutions, for example), and from foreign nationals. 2 U.S.C. 441b(a), 441e.
2. The Act prohibits "any personal use" of excess campaign funds except in cases where the individual who received such campaign funds (through an authorized campaign committee) was a Member of Congress on January 8, 1980. 2 U.S.C. 439a. In addition, Commission regulations provide that payments to (or on behalf of) individuals who are "testing the waters" to decide upon the feasibility of a campaign for Federal office are subject to the limits and prohibitions of the Act. 50 Fed. Reg. 9992 (to be codified at 11 CFR 100.7(b)(1), 100.8(b)(1), 101.3).