FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 25, 1987

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-4

William J. Brown
Emens, Hurd, Kegler & Ritter
Capitol Square
65 East State Street
Columbus, Ohio 43215

Dear Mr. Brown:

This responds to your letter of January 16, 1987, requesting an advisory opinion on behalf of the Senator John Glenn Committee concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the transfer of approximately $800,000 to the John Glenn Presidential Committee, Inc.

You state that the Senator John Glenn Committee ("the Senate Committee") is Senator Glenn's principal campaign committee for his 1986 reelection campaign to the U.S. Senate. The Senate Committee registered in June of 1985. You state that the Senate Committee is winding down its operations and has determined that it will have approximately $800,000 in excess funds.

You propose to transfer the excess funds to the John Glenn Presidential Committee, Inc. ("the Presidential Committee"), Senator Glenn's principal campaign committee in his attempt to obtain the 1984 Democratic Party presidential nomination. The Presidential Committee registered as Glenn's principal campaign committee in January of 1983. Senator Glenn publicly announced his withdrawal as a presidential candidate in March of 1984. The Presidential Committee has a remaining debt of approximately $3 million and you state that the transferred funds would be used to pay some of this debt. You ask if this transfer of funds from the Senate Committee to the Presidential Committee is permissible under the Act and Commission regulations.

The initial issue raised by the request is whether the transfer of funds from the Senate Committee to the Presidential Committee is subject to the conditions that apply to a transfer between principal campaigns committees of the same individual who is a candidate for two separate

Federal offices. See 2 U.S.C. 441a(a)(5)(C) and 11 CFR 110.3(a)(2)(v). Another issue is whether the transfer is governed by 2 U.S.C. 439a and 11 CFR 110.3(a)(2)(iv) which permit the use of excess campaign funds to make unlimited transfers of otherwise lawful contributions between current[1] and previous principal campaign committees of the same candidate.

Under 2 U.S.C. 441a(a)(5)(C), the principal campaign committee of a candidate seeking nomination or election to one Federal office may make unlimited transfers to a separate principal campaign committee, authorized by the same individual seeking nomination or election to a different Federal office, provided: the candidate is not actively seeking nomination or election to both offices; the limits on contributions from individuals are not exceeded by the transfer; and the candidate has not received funds under chapters 95 or 96 of Title 26. In the case of a presidential campaign that qualifies for Federal funds, Commission regulations implement 2 U.S.C. 441a(a)(5)(C) in providing that no transfers may be made if the presidential candidate is "simultaneously seeking" nomination or election to another Federal office. 11 CFR 9034.4(c); see also, 11 CFR 110.3(a)(2)(v).

The transfer as proposed by the Senate Committee would not be subject to the above cited provisions of the Act and regulations since Senator Glenn was not simultaneously seeking the 1984 presidential nomination of the Democratic Party and nomination for election (1986) to the U.S. Senate. Prior advisory opinions have applied the dual (or simultaneous) candidacy rules to situations where an individual became a candidate for two separate Federal offices within the same Federal election cycle. See Advisory Opinions 1984-38, 1982-1, and 1979-51. Moreover, the Commission did not apply these dual candidacy rules in the case where excess campaign funds from a Senate campaign committee in the 1980 election cycle were transferred (in two stages) for use in the 1984 presidential campaign of the same individual who, before the transfer, already had authorized a principal campaign committee for the 1986 Senate election cycle. Advisory Opinion 1982-39.

In the situation, presented here, Senator Glenn registered the Presidential committee as his principal campaign committee in January of 1983 and publicly announced his withdrawal as a presidential candidate in March of 1984. Subsequently, the Senate Committee registered in June 1985 as Senator Glenn's principal campaign committee for the 1986 U.S. Senate election. Thus, the transfer of funds proposed here is not a transfer between principal campaign committees of a dual candidate for two separate Federal offices. Instead, this proposed transaction is properly viewed as a transfer between current and previous principal campaign committees of the same individual notwithstanding that he was a candidate for two different Federal offices in overlapping election cycles.

Pursuant to 2 U.S.C. 439a, contributions received by a candidate in excess of any amount necessary to defray his (or her) expenditures may be used for any lawful purpose. 11 CFR 113.2(d). Commission regulations expressly exempt from limitation the transfer of funds between the current and previous principal campaign committees of the same candidate as long as none of the funds transferred include any contributions which would be in violation of the Act. 11 CFR 110.3(a)(2)(iv). The requirement that transferred funds may not include contributions "in violation of the Act" has been interpreted by the Commission to prohibit transfers of funds which include amounts donated by entities that are barred by the Act from

making any contributions.[2] See Advisory Opinion 1978-93. The cited regulation has not been held to require that contributions be traced to the original donors and aggregated where transfers are made between two principal campaign committees of the same individual who was a candidate for two Federal offices in sequential or overlapping election cycles.[3] Advisory Opinion 1982-39. Furthermore, several previous advisory opinions, applying the regulations, have concluded that aggregation of contributions for limit purposes from one election to another is not required, where the contributions were within the donor's limit with respect to the election for which originally made, even though such contributions are used to retire the campaign debts of the same candidate for a previous election. See Advisory Opinions 1981-9, 1980-143, 1980-30, and 1978-37.

Therefore, as long as the funds transferred by the Senate Committee are comprised of contributions made prior to the 1986 general election, and are within the donors' limits as to that election, such contributions need not be aggregated with contributions made by the same donors to the Presidential Committee. Subject to the foregoing, the Commission concludes that the Senate Committee may transfer to the Presidential Committee the excess funds of approximately $800,000.

The Senate Committee should itemize the payment as a transfer disbursement pursuant to 11 CFR 104.3(b)(4)(ii). The Presidential Committee should itemize the payment as a transfer receipt pursuant to 11 CFR 104.3(a)(4)(iii)(A).

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,

(signed)

Scott E. Thomas
Chairman for the Federal Election Commission

Enclosures (AOs 1984-38, 1982-39, 1982-1, 1981-9, 1980-143, 1980-30 and 1978-37)

1/ The Commission would consider the 1986 Senate Committee as a "current" principal campaign committee for purposes of these provisions.

2/ These entities are national banks, corporations, labor organizations, Government contractors, and foreign nationals. 2 U.S.C. 441b, 441c, 441e.

3/ This interpretation of 11 CFR 110.3(a)(2)(iv) is distinguished from those cases (discussed above) where a dual candidate receives contributions for two Federal election campaigns and is thus subject to 2 U.S.C. 441a(a)(5)(C).