FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 3, 1987
May 16, 1988* (Reconsideration)

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-30

Mr. Fred Burnell
Campaign Chairman
Bob Ripley for Senate Committee
641 Timber Trail
Stevensville, MT 59870

Dear Mr. Burnell:

This responds to your letters of July 28 and October 1, 1987, requesting an advisory opinion on behalf of the Ripley for Senate Committee concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to contributions by a co-signer of a loan to the Ripley campaign.

You state that Robert K. Ripley, a 1984 candidate for the United States Senate from Montana, and his wife, Martha Ripley, co-signed a loan note with the Bank of Columbia Falls in May 1983. This note was later cancelled, you explain, and a new note was substituted with only Mr. Ripley's signature. Mr. Ripley later negotiated and signed, by himself only, two additional notes payable to the Bank of Columbia Falls. The proceeds of these loans were used in Mr. Ripley's unsuccessful campaign for the Democratic nomination in the 1984 Senate primary election. All three loans were eventually consolidated on August 16, 1984, into a single note for $188,400. As partial collateral for this note, Mr. Ripley posted real estate properties in Virginia and Montana. Because these properties were held in joint tenancy, the Bank also required Mrs. Ripley to sign the note.

In April of 1986, the Virginia property was sold with only Mr. Ripley's share of sale proceeds applied to the loan repayment. A new note was negotiated in May 1986 for $132,675, secured by the remaining Montana property. Mrs. Ripley again was required to sign the note. The Bank of Columbia Falls thereafter failed and the Federal Deposit Insurance Corporation ("FDIC") assumed the Ripley note. The FDIC is attempting to collect on the note. You state that Mr.

Ripley does not have the personal assets to cover the note and that the FDIC is demanding that Mrs. Ripley's assets be combined with those of Mr. Ripley to satisfy the obligation. You ask whether Mrs. Ripley may contribute her assets to satisfy the loan obligation in an amount that exceeds the contribution limits of the Act.

As a preliminary matter, the Commission notes that this opinion will only address the issue of whether Mrs. Ripley may contribute her assets to pay on the loan without exceeding the limits of the Act. This opinion does not address the original loan transactions because any issues raised by those transactions relate only to past conduct, rather than to prospective conduct. The advisory opinion process contemplates future transactions, or activity that is already underway and may continue in the future. 11 CFR 112.1(b).

Any person, including the wife or family member of a candidate, may contribute an aggregate of $1,000 per election to a Federal candidate. 2 U.S.C. 441a(a)(1)(A), 11 CFR 110.1(b)(1). The term "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A). The regulations indicate that a loan guarantee, endorsement, or other form of loan security is a contribution at the time made whether or not the loan is repaid. 11 CFR 100.7(a)(1)(i). See also 11 CFR 100.7(a)(1)(i)(D), and 100.7(b)(11). In Advisory Opinion 1981-8 the Commission concluded that the co-signer of a bank loan, which was obtained to retire outstanding campaign debts, "would be a contributor and thus would be limited to signing on a loan of up to $1,000, assuming that person has not yet used any of his or her contribution limit" with respect to the candidate's campaign.

Where a Federal election campaign results in outstanding debts and obligations, Commission regulations provide that contributions to retire those debts are subject to the contribution limits. 11 CFR 110.1(g). Several advisory opinions issued since 1981 (and before) have applied and reiterated this long standing rule. Advisory Opinions 1985-2, 1984-60, 1983-2, 1981-22, and 1979-1. The contribution limits also apply regardless of whether the contributor is a member of the candidate's family. Advisory Opinions 1984-60 and 1981-15. Accordingly, Mrs. Ripley may not contribute in excess of $1,000 to her husband's 1984 Senate campaign; this limit applies to contributions made before and after the 1984 Senate primary election. Assuming Mrs. Ripley has not made any other contribution to Mr. Ripley's campaign, she may contribute $1,000 to satisfy the described loan obligation.[1] Any additional contributions would exceed the limits of the Act. 2 U.S.C. 441a(a)(1)(A).[2]

This opinion expresses no views as to Mrs. Ripley's obligations under State law with respect to the loan. Those issues are outside the purview of the Act. Advisory Opinions 1981-42 and 1979-1. In addition, the Commission expresses no opinion as to whether a contribution would result if Mrs. Ripley is held personally liable on the loan by court judgment and then makes payment to satisfy that judgment. See Advisory Opinion 1979-1.

This response constitutes an advisory opinion concerning application of the Act, and 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)

Scott E. Thomas
Chairman for the Federal Election Commission

* This opinion was originally issued December 3, 1987, but was vacated and modified by the Commission on May 11, 1988 pursuant to Mr. Burnell's request for reconsideration by letter dated December 20, 1987. See 11 CFR 112.6(a). The opinion as issued today is identical to the original opinion except for the second and third paragraphs on page 1.

1/ As indicated above, the Commission does not in this opinion express or imply any conclusions as to whether Mrs. Ripley did or did not make a contribution when she signed any loan documents, including notes payable to the Bank of Columbia Falls, in connection with these loans.

2/ In FEC v. Haley for Congress Committee, 654 F. Supp. 1120 (W.D. WA 1987), the district court, however, held that a loan guarantee after the election may not always be for the purpose of influencing a Federal election. The Commission has filed an appeal in this case with the United States Court of Appeals for the 9th Circuit.