



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 5, 1992

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-15

Austin Kelly, Treasurer  
Russo for Congress Committee  
P.O Box 627  
Oak Lawn, IL 60454-2677

Dear Mr. Kelly:

This responds to your letter dated April 23, 1992, requesting an advisory opinion on behalf of the Russo for Congress Committee concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the redesignation of contributions.

You are the treasurer of the Russo for Congress Committee ("the Committee"), the principal campaign committee of Congressman Martin A. Russo for re-election to the House of Representatives from the Third District of Illinois. Mr. Russo lost the primary election, held on March 17, 1992. The Committee received contributions totaling \$67,625 that were originally designated for the 1992 general election. Because of the primary election outcome, the Committee is trying to acquire redesignation of these contributions for the 1994 primary or, where possible, for the retirement of debts from the 1992 primary. You state the Committee sent out letters on April 7, 1992, requesting redesignation but that \$41,850 of these contributions were received more than 60 days before the letters were sent. You state that, as of April 23, 1992, the Committee has received authorization to redesignate \$9,050, and that \$6,100 of this amount is the result of "early contributions."

You explain that the Committee did not anticipate the necessity for redesignation until after the primary election. You seek an exception to the rule that contributions not redesignated must be refunded within 60 days of receipt by the treasurer. Accordingly, you request an advisory opinion that would "legitimize the redesignation of contributions received prior to February 7, 1992."

The Act's limitations on contributions made to a candidate with respect to any election for Federal office apply separately with respect to each election. 2 U.S.C. §441a(a)(1)(A), 441a(a)(2)(A), and 441a(a)(6). Commission regulations address the treatment of contributions received by a candidate or authorized committee prior to the date of the primary election, but designated in writing by the contributor for use in connection with the general election. Such contributions may be accepted, but the recipient committee must use an acceptable accounting method to distinguish between contributions received for the primary and contributions received for the general election. 11 CFR 102.9(e). Acceptable methods include, but are not limited to, the designation of separate accounts for each election, or the establishment of separate books and records for each election. 11 CFR 102.9(e)(1) and (2). These regulations are designed to ensure that candidates in Mr. Russo's situation do not use general election contributions for the primary election.

The regulations at section 102.9(e) specifically address the situation presented here by providing further that, if a candidate is not a candidate for the general election, any contributions made for the general election shall be refunded to the contributors, redesignated in accordance with 11 CFR 110.1(b)(5) or 110.2(b)(5), or reattributed in accordance with 11 CFR 110.1(k)(3), as appropriate.<sup>1/</sup> See also 11 CFR 110.1(b)(3)(i) and 110.2(b)(3)(i).

A contribution is redesignated for another election if several conditions are satisfied. The treasurer of the recipient authorized committee must request that the contributor submit a written redesignation and must inform the contributor that he or she may instead request a refund, and the contributor must provide a valid written and signed redesignation within 60 days of the treasurer's receipt of the contribution. 11 CFR 110.1(b)(5)(ii)(A) and (B) and 110.2(b)(5)(ii)(A) and (B). Redesignation to a particular election may only occur to the extent that the amount redesignated does not cause the contributor to exceed his or her limit for that election. If redesignation is for a previous election, the amounts redesignated cannot exceed the net debts outstanding from that election. 11 CFR 110.1(b)(5)(iii) and (b)(3)(i), 110.2(b)(5)(iii) and (b)(3)(i)<sup>2/</sup>

As alluded to in your request, the redesignation regulations refer to the requirement that a contribution redesignation be made within 60 days of the treasurer's receipt as an alternative to refunding the contribution. Nonetheless, the Commission concludes that for losing primary candidates like Mr. Russo, who receive contributions before the primary election that are designated for the general election, redesignation within 60 days of the primary election date would be permissible. Up until the primary date, such contributions could be made and retained, subject to the conditions of 11 CFR 102.9(e). It is not until the results of the primary election are announced that the treasurer has actual notice of the need to obtain redesignations to the extent permissible for the primary, obtain redesignations for the next election, or refund the contribution.<sup>3/</sup> See, by analogy, Advisory Opinion 1991-12 (the Commission concluded that redesignations of contributions to enable their inclusion in the beginning cash on hand of a committee affiliated with a principal campaign committee could occur within 60 days after the affiliated committee filed a Statement of Organization as an authorized committee).

Accordingly, the Commission concludes that the point from which to measure the time period for redesignation or refund is 60 days from the date of the Illinois primary, i.e., March 17, 1992,

rather than 60 days from the treasurer's receipt of the contributions. More than 60 days has elapsed from the primary date. Nevertheless, in view of the fact that the advisory opinion request was made 37 days after the primary election, the Commission concludes that the Committee has 23 days from the date of its receipt of this opinion to obtain redesignations or to make refunds to the contributors.<sup>4/</sup>

As stated above, contributions may be redesignated for the previous primary election to the extent of the net debt outstanding for the primary election. 11 CFR 110.1(b)(5)(iii) and (b)(3)(i), 110.2(b)(5)(iii) and (b)(3)(i). Therefore, the amounts received that were designated for the general election will not be included in the calculation of net debts. See Explanation and Justification, Federal Election Commission Regulations at 11 CFR 110.1 and 110.2, 52 Fed. Reg. 760, 762 (January 9, 1987).<sup>5/</sup>

The Commission cautions you that redesignation for the 1994 primary election may result in filing consequences for Congressman Russo and the Committee. If the Committee receives redesignations for the 1994 primary totaling in excess of \$5,000, Mr. Russo will have become a candidate in that election. 2 U.S.C. §431(2)(B); 11 CFR 100.3(a)(2). Within fifteen days of becoming a candidate, Mr. Russo will have to file a statement of candidacy in which he designates the Committee as an authorized committee. 2 U.S.C. §432(e)(1); 11 CFR 101.1.

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  
Vice-Chairman for the Federal Election Commission

Enclosure (AO 1991-12 and 1986-17)

#### ENDNOTES

1/ Although the regulations refer to reattribution under 11 CFR 110.1(k), any reattribution of a joint contribution previously designated for Mr. Russo's 1992 general election must also be redesignated by the contributors for a different election. Reattribution alone will not remedy the problem of the designation of a contribution for an election in which Mr. Russo will not participate.

2/ Reattribution to another contributor is subject to similar conditions and a similar time frame. 11 CFR 110.1(k)(3)(ii)(A) and (B).

3/ This situation is materially different from the situation addressed in 11 CFR 103.3(b)(2) where a treasurer receives a contribution that appears to be lawful but is discovered at a later date to be

from an impermissible source, or in the name of another. The treasurer, in that situation, must refund the contribution within 30 days of the discovery of the illegality. In the situation presented in your request, the designated contribution was not unlawful at the time it was made.

4/ The Commission notes that your request asks for an opinion that would "legitimize the redesignation of contributions received prior to February 7" because of the incorrect assumption that an authorized committee has a 60 \_ day time period in which to ask for a redesignation. As noted above in the regulations and in our conclusion, the 60-day time period imposes a deadline by which the Committee must either obtain the contributor's written and signed redesignation or make a refund of the contribution.

5/ The Commission notes that the Committee was permitted to use funds designated for the general election to make expenditures, prior to the primary, for limited general election purposes, i.e., "in those limited circumstances where it is necessary to make advance payments or deposits to vendors for services that will be rendered, or goods that will be provided" to a committee after establishment of general election candidacy. Advisory Opinion 1986-17. Nevertheless, this does not provide an additional general election limit for those whose general election contributions may have been used; nor does it obviate the obligation to make refunds of general election contributions if valid redesignations are not obtained.