FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 1, 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2000-32

The Honorable Matthew G. Martinez
U.S. House of Representatives
Washington, DC 20515-0531

Dear Mr. Martinez:

This refers to your letter dated October 12, 2000, in which you request an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the proper disposition and reporting of a debt owed to your principal campaign committee, Matthew Martinez Congressional Committee ("the Committee").

You state that on January 15, 1991, California State Senator, Charles Calderon, solicited and received a loan from the Committee in the amount of $5,000. You explain that the loan was reported by the Committee on Schedule C in its reports filed with the Commission.[1] Mr. Calderon was a candidate in a special election for Supervisor of Los Angeles County. He did not win that election. You further state that your efforts, along with those of your finance committee chairman, failed to secure repayment of this loan.

In view of the fact that this matter is almost 10 years old and the California statute of limitations has expired for collection purposes, you request an advisory opinion as to "charge off" of the loan and resolving the reporting issues created.[2]

[1] In its 1991 mid-year report, the Committee listed the $5,000 loan as a disbursement on Schedule B. The recipient of the loan was reported as the Committee to Elect Charles Calderon Supervisor, and the purpose of the disbursement was disclosed as "loan to supervisorial candidate." The Committee also reported the transaction on Schedule C as a loan made to the Calderon Committee.

[2] Under the California statute of limitations, a legal action for obligations arising from a written contract must be brought within four years of the contract breach. *See* CAL CODE Of CIVIL PROCEDURE § 337 (West 1982). The period for commencing an action for obligations arising out of a oral contact is two

Each report filed under the Act and Commission regulations shall, on schedule C or D, as appropriate, disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee. 2 U.S.C. §434(b)(8) and 11 CFR 104.3(d). Where such debts and obligations are settled for less than their reported amount or value, each report filed shall contain a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the amount paid. 2 U.S.C. §434(b)(8) and 11 CFR 104.3(d); s*ee also* 11 CFR 104.11, 116.2(b) and 116.7.

Under the Act and Commission regulations, a candidate and the candidate's committee have wide discretion in making expenditures to influence the candidate's election, but may not convert campaign funds to the personal use of the candidate or any other person. 2 U.S.C. §§431(9) and 439a; 11 CFR 113.1(g) and 113.2(d). Commission regulations provide guidance regarding what would be considered personal use of campaign funds. Personal use is defined as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g), *see* Advisory Opinions 2000-12 and 2000-02.

However, the Act and Commission regulations provide that excess campaign funds may be used for several specific purposes, including defrayal of any ordinary and necessary expenses in connection with the recipient's duties as a Federal officeholder, contributions to any organization described in 26 U.S.C. §170(c), transfers without limitation to any national, State, or local committee of any political party, or for any other lawful purpose. 2 U.S.C. §439a, *see* 11 CFR 113.2.

The original loan made by the Committee to Mr. Calderon to support his campaign for local office in California was a contribution to his non-Federal campaign. *See,* by comparison, 2 U.S.C. §431(8)(A)(i) [loan made by non-bank lender to influence Federal election is a form of contribution]. The Commission notes that transfers of funds or contributions to Federal candidate committees and State or local candidate committees are not included within the specific uses for campaign funds expressly authorized by 2 U.S.C. §439a and 11 CFR 113.2(d). However, this use of campaign funds would nonetheless constitute use for "any other lawful purpose" under 2 U.S.C. §439a and 11 CFR 113.2(d).[3]

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years. CAL CODE § 339. From the time period presented in the request, it appears that whatever the form of the agreement, the statute of limitations has apparently expired.

[3] This is consistent with prior advisory opinions where the Commission has concluded that one candidate's committee may use campaign funds to make political contributions to other Federal candidates, as well as to make donations to State or local campaigns. *See* Advisory Opinions 1993-8, 1986-36, 1984-1, and 1978-94. While these opinions were decided by the Commission prior to the 1995 revisions of section 113.2, the Explanation and Justification for the personal use regulations did not supersede these opinions. *See* Commission Regulations on Personal Use of Campaign Funds, Explanation and Justification, 60 *Fed. Reg*. 7862 (February 9, 1995).

The Act's legislative history also supports the ability of a Federal candidate committee to make contributions to other candidates. The House Report accompanying H.R. 5010 stated that contributions "by

The Commission also notes that this transaction concerns the support of a candidate for local office. State or local law that regulates the making of contributions to local or State candidates, or the reporting of such contributions by those candidates, is not preempted by the Act or Commission regulations.[4] Therefore, if any State laws or local ordinances would prohibit or limit this transaction, or impose any State or local reporting obligation on the local candidate involved, such laws would not be preempted or superseded by the Act or Commission regulations, or by this opinion.[5]

The original loan of funds and the "charging off" of the debt should be reported in a manner consistent with 11 CFR 104.3(d). Therefore, in its next report following the issuance of this opinion, the Committee should file a Schedule C which lists the loan owed by Mr. Calderon's campaign committee. It should list an outstanding balance of zero for the loan as of the close of the reporting period. In the column provided to show payments made during the reporting period, the Committee should disclose in parenthesis an amount indicating that the loan is forgiven and thus paid in full. The Committee should also include a memo entry which cites this advisory opinion and states the Committee's position that the statute of limitations for the debt has expired making collection unenforceable in the legal process. It should also state that the Committee will no longer list the transaction on its Schedule C.[6]

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an authorized committee of a candidate to an authorized committee of another candidate may be made so long as the contribution or contributions to a single candidate do not exceed $1,000." *H. R. Rep. No. 96-422, 96th Cong., 1st Sess. at 13 (1979).* Such contributions are not considered to be "support" within the meaning of 2 U.S.C. §§432(e)(3) and 11 CFR 102.12(c)(2) and 102.13(c)(2), which prohibit an authorized committee from supporting more than one candidate. *Id.*

[4] The Act and regulations state that the provisions of the Act and the rules prescribed under the Act "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. §453, 11 CFR 108.7(a). Commission regulations provide that Federal law supersedes State law with respect to the organization and registration of political committees supporting Federal candidates, the disclosure of receipts and expenditures by Federal candidates and political committees, and the limitations on contributions and expenditures regarding Federal candidates and political committees. 11 CFR 108.7(b). The regulations provide that the Act does not supersede State laws concerning the manner of qualification as a candidate or political party organization, dates and places of elections, voter registration, voting fraud and similar offenses, or candidates' personal financial disclosure. 11 CFR 108.7(c). The Commission explained that these "types of electoral matters are interests of the states and are not covered in the Act." Federal Election Commission Regulations, *Explanation and Justification*, House Document No. 95-44, at 51.

[5] In past advisory opinions, while the Commission has permitted the use of excess campaign funds to support non-Federal candidates, it has cautioned that such transactions would be subject to State or local regulation. *See* Advisory Opinions 1993-10, 1993-8, and 1978-94.

[6] This method would be analogous to that approved in Advisory Opinion 1999-38, where a candidate committee wished to cease reporting disputed debts it owed to various vendors on its Schedule D. In that opinion, as in your situation, the statute of limitations made collection of the debts impossible.

This response constitutes an advisory opinion concerning the 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)

Darryl R. Wold
Chairman

Enclosures (AOs 2000-12, 2000-2, 1999-38, 1993-10, 1993-8, 1986-36, 1984-1, and 1978-94)