



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 26, 1977

AO 1977-29

Honorable Richardson Preyer
House of Representatives
Washington, D. C. 20515

Dear Mr. Preyer:

This is in response to your letter of June 17, 1977, which requests an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the refund of a deposit made during your election campaign for State office.

Your letter indicates that in 1964, while a candidate for Governor of North Carolina, you deposited \$425 with Piedmont Aviation, Incorporated, of Winston-Salem, North Carolina. You later confirmed by letter dated July 15, 1977, that this deposit was made from your 1964 gubernatorial campaign fund and that the funds needed for the deposit were provided by a family member who earmarked them for that purpose. The account was established so that you and a campaign aide could charge airline tickets for use in campaign traveling. Piedmont has recently informed you that they still hold this deposit plus accumulated interest in the amount of \$63.75; you now wish to close the account and ask whether the money may be paid to you personally with the interest reported as income for tax purposes. You also ask whether the money may be refunded to an official of your 1964 gubernatorial campaign committee and then transferred to your congressional campaign committee.

The Commission concludes that neither the Act nor the regulations of the Commission would prohibit return of the deposit, with accrued interest, to you personally. Since the deposit was originally made on your behalf in a commercial transaction to secure campaign transportation, its return to you, pursuant to the terms of the commercial transaction, would not be regarded as a "contribution" for purposes of 2 U.S.C. 431(b) or (e). The Commission expresses no opinion as to the Federal tax ramifications of the described deposit return since those issues are within the jurisdiction of the Internal Revenue Service.

With respect to your second question, since the deposit was originally made from funds of your long dissolved 1964 gubernatorial campaign committee, provided for that purpose by a member of your family, the deposit plus interest may be paid directly to your congressional campaign committee and would not need to be treated as surplus funds from your 1964 gubernatorial campaign. The returned deposit and accrued interest would be reportable by your

congressional campaign committee as a miscellaneous receipt under the provisions of 2 U.S.C. 434(b)(7) and 104.2(b)(7) of the Commission's regulations rather than as a "contribution," since the return is made to discharge a contractual obligation of the payor not to influence your nomination or election to Federal office. The relevant report should identify Piedmont Aviation, Incorporated, as the payor and should also include an explanatory footnote or other annotation indicating that the payment is a refund of a deposit, with accrued interest, originally made from campaign funds of your 1964 gubernatorial campaign provided by a member of your family.

Although this returned deposit does not of itself make you a Federal candidate for 1978, a review of reports filed by the Preyer for Congress Committee, your 1976 principal campaign committee, reveals that subsequent to the general election on November 2, 1976, your committee received over \$2,000 of contributions which were not needed to retire outstanding debts reported by the Committee. The acceptance of these contributions on your behalf makes you a candidate with respect to a 1978 primary or general election, and as such you are required to file a statement of candidacy (FEC Form 2 or letter with same information) under 101.2 of the Commission's regulations. See Advisory Opinions 1977-11 and 1977-24, copies enclosed.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)
Thomas E. Harris
Chairman for the
Federal Election Commission

Enclosures