



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 19, 1978

AO 1978-63

Mr. J. Curtis Herge
Sedam & Herge
7600 Old Springhouse Road
McLean, Virginia 22101

Dear Mr. Herge:

This is in response to your letter requesting an advisory opinion on behalf of Friends of Dick Obenshain ("the Committee") regarding the applicability of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations, to payments made to the Committee subsequent to August 2, 1978.

Your letter states that the Committee was the principal campaign committee of Richard D. Obenshain, a candidate for election to the United States from Virginia. Mr. Obenshain was killed in an airplane crash on August 2, 1978. You estimate that as of the date of his death the Committee had incurred a campaign debt of approximately \$90,000.00.¹ A number of potential donors have expressed a desire to make payments to the Committee to assist in paying off the debt. Since some of these 'donations' would be prohibited by 2 U.S.C. 441a, 441b and 441c if considered contributions within the meaning of 2 U.S.C. 431(e), you specifically ask if payments made to the Committee subsequent to Mr. Obenshain's death constitute contributions as defined in 431(e). The Committee proposes to report all donations and the corresponding liquidation of the debt in accord with 434(b). Further, if there are any funds in excess of the liquidation of the debt they will be transferred to or applied for the benefit of Mr. Obenshain's family or used for some other lawful purpose but will not be transferred or applied for the benefit of any political committee or candidate as defined in 431.

"Contribution" is defined, in part, as a "gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing the nomination for election, or election of any person to Federal office...." Commission regulations at 11 CFR 110.1(g)(2) provide that contributions made to retire debts resulting from elections held after December 31, 1975 are subject to the limitations of 2 U.S.C. 441a and Part 110 of the regulations. This rule applies regardless of whether the candidate won or lost the election. Thus, the mere fact that the

¹ Commission reports filed to this date indicate a debt outstanding of approximately \$25,000, and conversations with counsel to the Committee suggest that the final debt will be in the range of \$25,000 rather than \$90,000.

election is over or a candidate drops out of a race does not preclude the payments from being considered contributions. In the situation presented, however, it is suggested that since the candidate is deceased, payments made to the Committee subsequent to his death would not be within the statutory definition of "contribution."

The Commission agrees that in this limited situation where the candidate is deceased, payments made to his Committee subsequent to his death for the purpose of liquidating the Committee debt are not made for the purpose of influencing the nomination or election of any person to Federal office and thus are not "contributions" under the Act. As receipts they must be reported by the Committee; corresponding liquidation of the debt would also have to be disclosed in accord with 2 U.S.C. 434(b). See 2 U.S.C. 434(b)(7) and 104.2(b)(7), 104.8 of Commission regulations.

In a former advisory opinion, the Commission concluded that a father's payment of his deceased son's primary campaign debts did not constitute a "contribution" within the meaning of the Act and said that "since the candidate is deceased, the proposed payment... would not meet the statutory definition."² Although the facts here are different, the purpose underlying the contribution prohibitions and limits -- to prevent actual or potential undue influence -- is the same.

The Commission will not consider these payments "contributions" under the Act in the limited situation of a deceased candidate on the assumption that, as you stated in your letter, any funds received in excess of the amount required to liquidate the debt will not be transferred or applied for the benefit of any "political committee" or "candidate" as defined in 2 U.S.C. 431. Moreover, the Commission emphasizes that this conclusion would not apply if a political party organization assumed the campaign debts of the Committee.

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

Sincerely yours,

(signed)
Joan D. Aikens
Chairman for the
Federal Election Commission

² Advisory Opinion 1976-68, September 8, 1976.