



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 13, 1979

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-30

Mr. Michael Flanary
Director, Finance and Operations
Democratic Party of Virginia
701 East Franklin Street
Richmond, Virginia 23319

Dear Mr. Flanary:

This responds to your letter of May 31, 1979, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations, to the transfer of funds between various Virginia Democratic Party Committees and the payment by these committees of debts owed by the Miller for Senate Committee.

Your letter states that three committees are involved in the situation presented:

The Miller for Senate Committee (Miller Committee), which has a debt of \$27,000. It is a registered committee reporting to the FEC for the 1978 U.S. Senate bid of Andrew P. Miller;

The 1978 Virginia Democratic Campaign Committee, (VDCC) which has a debt of \$15,000. It is a registered committee reporting to the FEC and provided phone bank operations to candidates for the House of Representatives in addition to the Senate bid of Andrew P. Miller; [It has spent \$68,560.89 toward the election of Federal candidates.]

The Jefferson-Jackson Day Committee, (J-J) which has a surplus of \$22,500 in its account. This is a fundraising committee that maintains a separate bank account from the Democratic Party of Virginia. This committee did receive \$1,000.00 in corporate and union funds. However, through specific identification we can prove

that an amount in excess of \$22,500 was not from these sources. The J-J Committee is not registered with the FEC.

Your letter explains that the Jefferson-Jackson Day Committee ("JJDC") held a fund-raising dinner, which yielded a profit of approximately \$42,500; \$20,000 has been transferred to the Democratic Party of Virginia. The balance, approximately \$22,500, remains in the separate JJDC bank account.

Specifically, you ask whether the Democratic Party of Virginia can pay up to \$15,000 directly to the creditors of the Miller Committee, either from the JJDC account, or by transferring that amount from the JJDC account to the 1978 VDCC and having the VDCC make payment to the Miller Committee creditors. In addition, you ask if \$7,500 can be transferred from the JJDC to the 1978 VDCC to facilitate repayment of a portion of the VDCC debt owed to the Bank of Virginia Beach.

Title 2 U.S.C. 441a(d) is applicable to your first question. Under that section a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of its candidates for Federal office, subject to the limitations contained in that subsection. The Commission has previously heard that payments by a State committee to creditors of the party's general election candidates may be considered expenditures for purposes of 441a(d). See Advisory Opinion 1979-9 (copy enclosed). That opinion further stated that all other 441a(d) expenditures made by the committee for a particular candidate's general election campaign must be combined with the payments to retire debts and when combined must be within the applicable 441a (d)(3) limit.

In the situation which you present however, the funds which are intended to pay the debt are in the JJDC account. Although the JJDC is an arm of the Virginia Democratic Party it is not a registered political committee. Additionally, it has in its account \$1,000 of corporate and union funds. If the JJDC now wishes to participate in financing Federal elections as well as State and local, the committee may segregate its funds and organize its operations in accordance with the provisions of 11 CFR 102.6. That section provides, in part, that each State committee and subordinate committee of the State committee which intends to solicit, receive, or make contributions or expenditures, in excess of \$1,000, to, for, or on behalf of any candidate for Federal office can establish a separate Federal campaign committee which shall register as a political committee and establish a segregated Federal account. Hence, to participate, the JJDC must register as a "political committee" connected with the Virginia Democratic Party.*

Commission regulations at 11 CFR 104.10 require that if at the time of registration a political committee has cash on hand, the source of these funds be disclosed on the committee's first report, and the information required by 104.2 must be included. According to 104.10 the cash balance is assumed to be composed of those contributions most recently received by the committee before its registration. Further, the committee must exclude from funds to be used for Federal elections any contributions not permissible under the Act. In summary, in order for the

* When the JJDC registers it must notify all contributors who are listed on its report that it has become a "political committee" as defined in 2 U.S.C. 431(d). This is required due to 11 CFR 102.6 and the fact that these contributions will be charged against the individual contribution limits. See 2 U.S.C. 441a and 11 CFR 110.1 and 110.2.

JJDC to participate in Federal elections in the manner you describe, it must register as a political committee and identify the sources of its cash on hand on the basis of last in, first "on hand." If any of that cash "on hand" consists of union or corporate treasury contributions, that amount shall be excluded from the JJDC's Federal account. See 2 U.S.C. 441b.

The Commission concludes that if, after the JJDC registers as a political committee and follows the cash determination process set forth in 104.10, it has \$15,000 in its Federal account, that amount may be paid directly to the creditors of the Miller Committee subject to 441a(d)(3) limits. Also, since 110.3(c) of the Commission's regulations permits unlimited transfers between political committees of the same political party, the JJDC after it registers and discloses cash on hand in the described manner, could transfer the \$15,000 to the VDCC for direct payment to the Miller Committee creditors. In either situation the 441a(d)(3) limits apply, and there is one overall limit for the State committee and its subordinate committees.

In response to your question regarding a transfer of \$7,500 from the JJDC to the 1978 VDCC, 110.3(c) of Commission regulations permits unlimited transfers between State and subordinate committees of the same political party. Hence if there is \$7,500 in the JJDC Federal account it may transfer that amount to the VDCC.

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)

Robert O. Tiernan
Chairman for the
Federal Election Commission

Enclosure