



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 10, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-44

Bart E. Ecker
Laputka, Bayless, Ecker & Cohn
Sixth Floor
First Valley Building
Hazleton, Pennsylvania 18201

Dear Mr. Ecker:

This responds to your letters dated July 19 and September 8, 1988, in which you request an advisory opinion on behalf of the Bonner for Congress Committee ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the proposed termination of the Committee.

You explain that the Committee, of which you are treasurer, was the principal campaign committee of Francis Bonner, an unsuccessful candidate for Congress in the spring 1982 primary election in the 11th District of Pennsylvania. Mr. Bonner has not been a candidate for elective office since 1982. All the debts of the Committee were incurred prior to August 1, 1982. The most recent report filed by the Committee (the 1988 mid-year report) shows outstanding debts and obligations of \$11,263, of which \$3,683 represents outstanding loans owed by the Committee.¹ The report lists \$2.25 cash on hand. There have been no fundraising activities on behalf of the Committee since July 1982, and "[t]here have been absolutely no collection efforts made by any [C]ommittee creditor whose unpaid balance is over \$300."

You state that under Pennsylvania law a claim for money due, either on a loan, for services rendered, or for goods supplied, must be commenced within six years from the date that the debt was incurred. If a cause of action is not filed within the six-year period, the Pennsylvania statute of limitations bars the claim. See 42 Pa. Cons. Stat. Ann. § 5527 (Purdon 1981 & 1988 Supp.). You conclude that, "by operation of law, . . . all debts of the Bonner for Congress campaign are barred by the Statute of Limitations and uncollectible."

You ask the Commission whether, under the circumstances you have described, the Committee "may file a termination report thereby ending its reporting obligations under the Act and Commission Regulations since no claim has ever been filed against the Committee."

Under the Act, "[a] political committee may terminate only when such a committee files a written statement . . . that it will no longer receive any contribution or make any disbursement and that such committee has no outstanding debts or obligations." 2 U.S.C. 433(d)(1). See also 11 CFR 102.3. Although the regulations do not explicitly define "outstanding debts or obligations," the Commission historically has understood the term to refer to debts or obligations that have not been extinguished. See, e.g., 2 U.S.C. 434(b)(8), 11 CFR 102.3(b) and 104.11, and Advisory Opinions 1979-5 and 1975-102. The Commission has usually turned to State law to determine whether a particular debt or obligation has been extinguished. See, e.g., Advisory Opinion 1975-102.

Pennsylvania's general statutes of limitation speak of the time within which a civil action or proceeding must be commenced. They do not speak of the extinguishment of the foundational claim. See Pa. Cons. Stat. Ann. §§ 5501 et seq. (Purdon 1981 & 1988 Supp.). Courts applying Pennsylvania law have long distinguished between statutes of limitation applicable to non-statutorily created causes of action and statutes of limitation applicable to statutorily created causes of action. The former-- the kind pertinent here--do not extinguish the underlying cause of action; the claim continues to exist, although judicial enforcement of it may be barred if a defendant raises the statute-of-limitation defense. See, e.g., Empire Tractor Corp. v. Time, Inc., 10 F.R.D. 121, 122 (E.D. Pa. 1950) ("[A] statute of limitations can effectively preclude recovery, but it nevertheless does not go to the 'right' to recover, unless it is a special statutory limitation qualifying a given right") ; Gravinese v. Johns-Manville Corp., 324 Pa. Super. 432, 471 A.2d 1233, 1238 (1984) (citing Chase Securities Corp. v. Donaldson, 325 U.S. 304, reh. denied, 325 U.S. 896 (1945)). Because invocation of a Pennsylvania statute of limitation is an affirmative defense that may be waived and that generally goes to matters of remedy and not to destruction of claims or rights, under Pennsylvania law the Committee still has outstanding debts and obligations.

This conclusion does not foreclose the termination of the Committee's reporting status. Because 2 U.S.C. 433(d)(1) permits a political committee to terminate "only when [the] committee files a written statement . . . that such committee has no outstanding debts or obligations," the Commission has encouraged committees with outstanding debts and obligations to settle them.² See 11 CFR 102.3, 114.10(b) and (c), and Advisory Opinion 1979-5. Cf. Advisory Opinion 1985-10. If the Committee devises a debt settlement plan³ and files a statement of settlement with the Commission,⁴ the Commission will review all relevant information, including the running of statutes of limitation. See 11 CFR 102.3, 114.10, and FEC Directive No. 3 (July 22, 1982) on debt settlement procedures. If the Commission determines that the Committee has complied with the debt settlement procedures set forth at 11 CFR 114.10 and with all other requirements, the Commission will inform the Committee that it need no longer file periodic reports. Until the Commission completes its final review and notifies the Committee of its decision, however, the Committee must continue to report its debts and obligations. 2 U.S.C. 434(b)(8); FEC Directive No. 3.

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)

Thomas J. Josefiak
Chairman for the Federal Election Commission

Enclosures (Advisory Opinions 1985-10, 1979-5, and 1975-102 and FEC Directive No. 3 (July 22, 1982))

1/ The creditors to whom the committee has owed money since 1982 include the corporation that provided telephone service (\$766.12), the company that printed most of the campaign material (\$2,312.02), the firm that helped with radio and television publicity (\$945.70), and the corporation from whom the Committee rented its campaign headquarters (\$360.00).

Three individuals lent money to the Committee. The candidate, Mr. Bonner, was one of the lenders. Only his loan exceeded \$1,000. From the Committee's filings, it appears that none of the loans had a due date or specified a rate of interest to be charged. The Commission points out that these loans may be transformed into gifts if the individuals who lent the money authorize the recharacterization and if the individual lenders other than Mr. Bonner are within their contribution limitations. See 2 U.S.C. 441a(a)(1); 11 CFR 100.7(a)(1) and 110.1(b). The regulations permit Federal candidates to make unlimited expenditures from their personal funds to further their nomination or election. 11 CFR 110.10(a).

2/ In the alternative, 11 CFR 102.4 provides that "the Commission, on its own initiative or upon the request of the political committee itself, may administratively terminate a political committee's reporting obligation on the basis of [several] factors." See 2 U.S.C. 433(d)(2). You should note that the Commission is reviewing its administrative termination authority and procedures and that no administrative terminations have been approved by the Commission since 1983.

3/ A corporation may lawfully settle or forgive a debt only if the creditor has "treated the outstanding debt in a commercially reasonable manner." 11 CFR 114.10(c). See also 11 CFR 100.7(a)(4), 114.10(a) and (b), and 2 U.S.C. 441b(a). A settlement is considered commercially reasonable if (1) the creditor made the initial extension of credit in accordance with Commission regulations, (2) the political committee "has undertaken all commercially reasonable efforts to satisfy the outstanding debt," and (3) the creditor "has pursued its remedies in a manner similar in intensity to that employed by the corporation in pursuit of a non-political debtor." 11 CFR 114.10(c).

4/ "This statement must be filed prior to the termination of the reporting status of the debtor and the settlement is subject to Commission review." 11 CFR 114.10(c).