



FEDERAL ELECTION COMMISSION
Washington, DC 20463

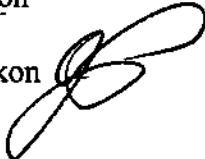
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AGENDA ITEM
For Meeting of: 8-1-02


MEMORANDUM


July 25, 2002


TO: The Commission

THROUGH: James A. Pehrkon 
Staff Director.

FROM: Lawrence H. Norton 
General Counsel

Rosemary C. Smith 
Acting Associate General Counsel

Mai Dinh 
Acting Assistant General Counsel

Michael Marinelli 
Staff Attorney

SUBJECT: Blue Draft in Advisory Opinion 2002-08

The Office of General Counsel has prepared the blue draft for Advisory Opinion 2002-08. After considering the equitable factors of this situation and its unique circumstances the blue draft permits the re-deposit proposed by the Requestor of funds from an account of the candidate's State exploratory committee to the Federal Committee account.

The blue draft cites the special circumstance that the contributions making up the original deposit were raised in compliance with the Act and were placed in a segregated account in which no other non-Federal funds were commingled. It examines the Explanation and Justification for 11 CFR 110.3(d) and notes that under these circumstances the policy concerns for this regulation do not apply. The draft, therefore, concludes that 11 CFR 110.3(d) was not intended to apply to this factual situation. Consistent with this conclusion, the draft also requires the requestor to report the transaction on the appropriate Federal Committee report.

This Office is recommending the approval of the attached blue draft and requests that it be placed on the Open Session Agenda for August 1, 2002

Attachment
Blue Draft

1 ADVISORY OPINION 2002-08
2
3 William J. Vanderbrook, Treasurer
4 David Vitter for Congress
5 202 East Livingston Place
6 Metairie, LA 70005
7

DRAFT

8 Dear Mr. Vanderbrook:
9

10 This refers to your letters dated June 24, and June 6, 2002 concerning the
11 application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and
12 Commission regulations to a proposed "transfer" of funds to the David Vitter for
13 Congress Committee ("Federal Committee") from a State committee controlled by
14 Congressman David Vitter.¹

15 You state that you are the treasurer for the David Vitter for Congress Committee,
16 Congressman Vitter's principal campaign committee. In March 2002, a State exploratory
17 committee was formed and \$500 was deposited to this committee's account from the
18 Federal Committee. You further state that in April 2002, another \$700,000 was also
19 transferred to this committee from the Federal Committee.² You explain that this money
20 was "established as a separate account and was not commingled with any contributions
21 made directly to the State exploratory committee under State law limits and guidelines."
22 You state that as of May 31, 2002, Congressman Vitter had decided not to seek State
23 office in Louisiana and the \$700,500 is still in a separate account.

24 You propose to "transfer" all of the \$700,500 directly back to the Federal
25

¹ Since 1999, Congressman Vitter has represented the 1st Congressional District in Louisiana.

² The Federal Committee reported a \$500 transfer on its April Quarterly Report and a \$700,000 transfer on its 2002 July Quarterly Report.

1 Committee, dollar for dollar. You state that all of this money was raised under Federal
2 election law guidelines and has not been commingled with money raised under State law;
3 nor has any of it been spent. You also affirm that neither a loan nor line of credit was
4 established by the State exploratory committee. Therefore, the funds in the separate
5 account were not used as security or collateral for any loan or line of credit related to the
6 Committee.

7 **ACT AND COMMISSION REGULATIONS**

8 While the Act does not specifically address the transfers from non-Federal
9 accounts to Federal accounts of candidates' principal campaign committees, under 11
10 CFR 110.3(d), the transfer of funds or assets from a candidate's campaign committee or
11 account for a non-Federal election to his or her principal campaign committee or other
12 authorized committee for a Federal campaign are prohibited. However, at the option of
13 the non-Federal committee, the non-Federal committee may refund contributions, and
14 may coordinate arrangements with the candidate's principal campaign committee or other
15 authorized committee for a solicitation by such committee(s) to the contributors.

16 **APPLICATION TO PROPOSAL**

17 After reviewing the unique facts presented here, the Commission concludes that
18 this is not the type of situation to which the regulations 11 CFR 110.3(d) were intended to
19 apply. It is evident from the Explanation and Justification for "Transfer of Funds From
20 State to Federal Campaigns," that this regulation was intended to prohibit the transfer to a
21 Federal committee of funds raised with respect to a state election in accordance with state
22 laws. This regulatory scheme was adopted because, as noted in the Explanation and
23 Justification, "[m]any states allow individuals to make contributions to state candidates

1 that would exceed FECA limits...[and] allow corporations and labor organizations to
2 make contributions to state candidates." 58 *Fed.Reg.* 3474 (January 8, 1993). This
3 Explanation and Justification further states that "[The Commission] is also concerned
4 about the indirect use of impermissible funds in federal elections...consequently, the
5 Commission has decided to promulgate new rules that would more effectively prevent the
6 indirect use of impermissible funds in federal elections." *Id.* at 3475.

7 In contrast to the concerns identified in the Explanation and Justification, the
8 funds in question here were raised in their entirety by a Federal committee under the
9 limits and prohibitions of the Act. In addition, the funds were placed in a segregated
10 bank account by the state committee and were never commingled with non-Federal funds.
11 Moreover, the state committee's segregated bank account, which has been open for only a
12 few months, was never used for the State campaign. Indeed, the funds remain intact to
13 this day. In sum, the concerns that were articulated in the Explanation and Justification in
14 regard to transfers from state to Federal committees are wholly absent in this situation.

15 Viewing these factors together, the Commission concludes that because the
16 \$700,500 effectively remained Federal funds at all relevant times, they may be re-
17 deposited into the Federal committee's account without violating 11 CFR 110.3(d). This
18 re-deposit should be reported on the next report filed by the Federal Committee. The
19 Federal Committee should also include a memo entry in the report, consistent with the
20 conclusions of this opinion, explaining the circumstances of the re-deposit.

