ADVISORY OPINION 1975-15

Payment of Royalties by Campaign Committee to Candidate

This advisory opinion is rendered under 2 U.S.C. 437f in response to a request for an advisory opinion from Mr. Charles S. Snider, Chairman and Executive Director of the Wallace Campaign '76, Inc. (hereinafter "Campaign") and was published as AOR 1975-15 in the Federal Register, July 17, 1975 (40 PR 30258). Interested parties were given an opportunity to submit written comments relating to the request.

The request asks in substance whether there is any provision of Federal law within the Commission's jurisdiction which prohibits payments pursuant to a contract between George C. Wallace (hereinafter "candidate") and the Campaign. The contract provides that the candidate has granted the Campaign exclusive rights to use his photograph, facsimile signature, photo biograph, and minted likeness in books or on watches, minted medallions, and coin-like replicas. In return the Campaign has agreed to set aside specified portion of the sales proceeds as a royalty for the candidate; to keep an account thereof; and to pay the royalties to the candidate whenever he shall choose but not to exceed $15,000 per year, regardless of the amount collected. The period of the contract is 10 years, which may be extended by mutual consent for additional 5-year periods. If not extended, any funds remaining in the royalty account would be paid to the candidate.

The Campaign has informed the Commission that all receipts and expenditures relating to the sale of the items will be disclosed in accordance with 2 U.S.C. 431, 434, and solicitations directed to the public will disclose that a portion of the purchase price is to be set aside for the candidate. The Campaign has further represented to the Commission that it is the only seller of the items described by the contract; that the Campaign considers all of the items to be campaign materials; and that the items are advertised through the Campaign's newsletter and by word of mouth.

In these circumstances, it is the Commission's view that when the Campaign sells the described items, it is engaging in an activity to raise funds and to build support for the candidate. As a general matter, a person who transmits money to a political committee or candidate -- any portion of which is available to be spent for the purpose of influencing a Federal election -- has made a contribution in the full amount of the funds so transmitted. 18 U.S.C. 591(e) and 2 U.S.C. 431(e). The fact that the contributor obtains an item of intrinsic value does not remove the transaction from this definition of contribution. The items offered by the Campaigns are an inducement to the contributor to give money the same as a dinner or other social event held for the purpose of fundraising. If a contributor wants the candidate to get maximum value from any contribution, then he or she may contribute money directly without putting the candidate to the expense of providing an inducement. In addition, since both the royalty payment and the cost of procuring the items from the suppliers are necessary expenses incurred to provide an inducement for the making of a contribution, they will be regarded as expenditures under 18 U.S.C. 591(f) and chargeable against the candidate's expenditure limitations in 18 U.S.C. 608(c).

The Commission makes this determination in view of the admittedly political purpose underlying the procurement and sale of these items, namely to engage in a political fundraising activity and thereby build support in aid of the candidate's campaign. For the same reasons set forth above, it is also clear that all financial transactions of the Campaign related to the sale of these items to contributors, their procurement from the vendor, and the royalty payment to the candidate, are reportable under 2 U.S.C. 431 and 434.1/

The candidate's receipt of a royalty from the campaign for the use of his photograph, signature, and minted likeness, does not, in the Commission's opinion, violate the Federal Election Campaign Act of 1971, as amend (the Act), nor any of the existing provisions of Title 18, United States Code. Before 1972, 18 USC 608(b) prohibited the purchase of goods or articles, if the proceeds "directly or indirectly inure(s) to the benefit of or for any candidate for an elective federal office * * *". The likely effect of that provision would have precluded this royalty contract. However, the 1971 Act, in amending 18 U.S.C. 608, effectively repealed the quoted language. The Commission would be less than frank if it failed to note its disapproval in principle of any practice whereby a candidate personally profits from campaign contributions. Nonetheless, the law appears clear.

Finally, the Commission is of the opinion that, although the total amount contributed to obtain one of the items described above will be a contribution for the purposes of Titles 2 and 18, United States Code, the same treatment will not be accorded the transaction under Chapter 96 of Title 26, United States Code. The term contribution is more restrictively defined in 26 U.S.C., 9034(a) as a "gift of money." It is the Commission's view that the purchase price paid for an item with significant intrinsic and enduring value is not a contribution within this definition. Therefore, contributions raised in this manner will not be considered for the purpose of determining eligibility under 26 U.S.C. 9033 or for the purpose of entitlement under 26 U.S.C. 9034.

1/ That such contributions and expenditures are reportable under 2 U.S.C. 434(b) was also the view of the Office of Federal Elections, United States General Accounting Office (previously responsible as a supervisory authority under the Federal Election Campaign Act of 1971), as expressed in a letter to Governor Wallace's campaign chairman on December 23, 1974.