FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 19, 1978

AO 1978-68

John J. Mustes
Seith for Senate Committee
407 S. Dearborn St
Room 790
Chicago, Illinois 60605

Dear Mr. Mustes:

This responds to your letter of August 20, 1978, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use of Master Charge or BankAmericard credit cards in making political contributions to the Seith for Senate Committee.("the Committee").

You state that persons viewing radio and television commercials of the Seith campaign may be asked to call a toll free telephone number and charge a political contribution to their BankAmericard or Master Charge credit card. The call would be received by an independent company which receives and processes many types of calls. The operator answering the call would take the caller's name, address and credit card number plus all other information required under the Act and Commission regulations such as occupation and principal place of business. The credit card information would be "entered on special forms, which are then deposited in the candidate's campaign account." Your letter points out that a signature by the contributor is not required to assure the validity of these credit card transactions. You ask for an opinion whether the recordkeeping and reporting requirements of the Act, as applicable to the Seith campaign, may be satisfied under the described circumstances.

The term "contribution" is defined in the Act to include "a written contract, promise, or agreement, whether or not legally enforceable, to make a contribution" for the purpose of influencing the nomination or election of any person to Federal office. 2 U.S.C. 431(e)(2). Regulations of the Commission at 11 CFR 100.4(a)(3) explain that a contribution includes a written agreement to make a contribution and that the agreement shall be reported as a debt owed to the candidate or committee until it is honored. It is significant that the definition does not require the writing to be signed by the person making the contribution in order for the transaction to be characterized as a contribution. Accordingly, contributions authorized to be made by

telephone, and using a written form to record pertinent contributor and credit card information, would be regarded by the Commission as contributions under the Act.

Contributions made by credit card would be reportable by the Committee as of the date the proceeds of the transaction are received by the Committee, provided they are received within the same reporting period when the credit card was used.* The contributor's identification and occupation and principal place of business must be disclosed on Schedule A if the credit card contribution (either by itself or when combined with other contributions in the same calendar year, exceeds $100. 2 U.S.C. 434(b)(2), 11 CFR 104.2(b)(2). A contribution by credit card which in a contribution by more than one person must include a notation to that effect on the credit card charge document; the notation may only include persons who are authorized to use the credit card. See 11 CFR 104.5(e).

The independent company which receives telephone authorizations by contributors using their credit card for political contributions is regarded as a person receiving a contribution for a political committee under 2 U.S.C. 432(b) and is therefore required to render to the treasurer of the Committee a detailed account of each contribution in excess of $50 within 5 days after the contributor authorizes use of the credit card. In addition, the treasurer of the Committee is required to keep detailed and exact accounts of all contributions made to or for the Committee by means of credit cards. 2 U.S.C. 432(c). The amount of any contribution made by credit card is the amount authorized by the contributor and may not be reduced by any discounts or service charges deducted by the credit card issuer when remitting contribution proceed to the committee. See 100.4(a)(2) of Commission regulations. Any deductions or set offs by the credit card issuer against the proceeds of contributions made by credit card are considered expenditures of the Committee and must be reported as expenditures) as of the date the Committee receives notice that the deduction or set-off is being taken.

Finally, in concluding that contributions by credit card (if otherwise lawful) are permitted under the Act, the Commission assumes that the credit card issuers (BankAmericard and Master Charge) will follow their usual and normal collection procedures with respect to obtaining payment from persons who used their credit cards to make political contributions to the Committee. The Commission also assures that the credit card issuers, as well as the "independent company" processing the calls and credit card charges, are rendering their services in the ordinary course of business and receiving the usual and normal charge for their services; i.e. the prevailing charge for the services at the time they were rendered. See Commission regulations at 11 CFR 100.4(a)(1)(iii)(B). To the extent the credit card issuers or the company processing the telephone calls is rendering services to the Committee at a charge below the usual and normal charge, the difference would constitute a contribution in-kind to the Committee. As you know, the contribution of anything of value by a corporation to a candidate for Federal office, or his/her campaign committee, is prohibited by 2 U.S.C. 441b.

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* If the proceeds of contributions made by credit card are not remitted to the Committee by the payor bank within approximately the same time period that contributions by cheek are credited to the bank accounts of the Committee, then the Committee may be required to report the credit card transaction on Schedule C of FEC Form 3 as a outstanding debt or obligation owed to the Committee as of the date the card was used. 2 U.S.C. 434(b)(12), 436(c); see also 104.8 of Commission regulations and reporting instructions on reverse side of Schedule C, FEC Form 3.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed an a Commission regulation, 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