



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 17, 1979

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-35

Mr. Robert F. Bauer
Holman & Fletcher
919 18th Street, N.W.
Washington, D. C. 20006

Dear Mr. Bauer:

This is in response to your letter of June 20, 1979, as supplemented by letter of July 6, requesting an advisory opinion on behalf of the Democratic Senatorial Campaign Committee ("the DSCC") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a fundraising effort to be conducted by the DSCC in cooperation with certain Democratic Senate candidates.

You explain in your request that an artist has agreed to volunteer his services in creating a work of art to be used in making art prints. The artist will permit the participating candidates, jointly with the DSCC, to make a certain number of prints from the work of art which will be especially prepared for, and exclusively used by, the DSCC and the participating candidates.¹ The DSCC and the candidates will advise potential contributors that if a contribution of a certain amount is made jointly to the DSCC and the candidate, the contributor will receive, in return, one of the art prints as a gift. You indicate that all material used in this joint fundraising effort will carry the notice required by 2 U.S.C. 435 and 11 CFR 110.11(c) and will advise the contributors of the intended allocation of monies received. You further state that the materials will notify contributors of the contribution limits applicable to each allocation and that any contributions in excess of these limits will be returned.

¹ You indicate that the artist will also allow the Democratic National Committee ("the DNC") to make a certain number of the prints available as "gifts to major contributors," but that all accounting and reporting of the related contributions and expenses will be separately handled by the DNC as part of its normal reporting process. Thus, this opinion does not reach any issues concerning the DNC's use of the prints as gifts to its contributors.

With regard to recordkeeping and reporting for the subject fundraising effort, you indicate that the DSCC will have written authorization from each participating candidate to act as "agent" in collecting all funds and keeping all records. The DSCC will establish a special account which will be designated by each candidate as an additional campaign depository. Separate records will be maintained by DSCC for each candidate to reflect contributions received on behalf of each candidate and to monitor all production, solicitation or other expenses incurred in connection with the prints allocated jointly between the DSCC and the participating candidate. The DSCC will report the gross proceeds received into the special account and, after expenses have been paid out of contributions received, will transmit the appropriate shares to the candidates, along with all information required under 102.9(a)(1)-(4) and 104.2(b)(2) of the Commission's regulations. Each candidate's principal campaign committee will, in turn, report to the Commission its share of such contributions as result from this effort. You ask whether the foregoing procedures are in compliance with the Act.

Before proceeding to a discussion of the recordkeeping and reporting procedures outlined in your letter, there is an underlying question which, although not specifically asked in your request, must first be addressed. That is, to what extent, if any, would the artist involved in the subject fundraising effort be considered to have made a contribution to the DSCC and the participating candidates in creating the work of art from which the art prints are to be made. 2 U.S.C. 431(e)(1) defines the term "contribution" as a "gift, subscription, loan, advance, or deposit of money or anything of value ..."(emphasis added). The artist in this situation will presumably expend some amount out of personal funds for the basic materials used to create the work of art. These expenditures, in and of themselves, give value to the resulting art work and, if unreimbursed, would constitute an in-kind contribution by the artist to the DSCC and the participating candidates subject to the limitations and reporting requirements of 2 U.S.C. 441a and 434. However, with regard to the artist's donation of his services in creating the work of art from which the prints are to be made, the Commission would view this activity as analogous to the free appearance of a performer at a fundraising event for a candidate thus falling within the volunteer service exception of 2 U.S.C. 431(e)(5)(A) and 11 CFR 100.4(b)(2). See Advisory Opinion 1975-97, copy enclosed. The value of such services provided without compensation would not constitute a contribution to the participants in the fundraising effort.

The Commission concludes that your proposal is acceptable under the Act and regulations with regard to the recordkeeping and reporting obligations incident to the suggested activity (see also Advisory Opinions 1979-6, 1977-61, 1977-23 and 1977-14), but does offer the following guidance in this area.

Initially, it should be noted that since the DSCC will be acting as the authorized agent of all participating candidates and each candidate will designate the DSCC's special account as an additional campaign depository, the recordkeeping and reporting obligations of the Act become applicable when the DSCC receives any contribution on behalf of the candidates. Under 11 CFR 103.3, the DSCC would be required to deposit all contributions in the special account within 10 days from the date of receipt. With regard to the reporting of gross proceeds of the fundraising effort, DSCC would be required to disclose all relevant contributor information on Schedule A. DSCC should also report all expenditures it makes for production, solicitation or other costs related to this effort.

The distribution of net proceeds from the program to each participating candidate should be reported by DSCC as a transfer out with an explanation on Schedule B stating that the transfer is a distribution of proceeds from joint fundraising with the particular candidate. When these proceeds are distributed, and each candidate is transmitted his or her "appropriate share," DSCC should furnish to each candidate's principal campaign committee complete information relative to the contributors who are identified with the aggregate amount being transferred. See 2 U.S.C. 432(c) and 434(b) and 11 CFR 102.9, 104.2. This should include the candidate's share of each gross contribution originally received and reported by DSCC. Since it appears from your request that the DSCC will make and report all expenditures in connection with the subject fundraising effort, it would not be necessary for the DSCC to furnish each candidate's campaign committee with comparably detailed information concerning expenditures. However, in order to avoid the making of any in-kind contribution by the DSCC to a particular candidate, the allocation of fundraising costs should be made on the same basis as the allocation of proceeds.

The receipt of joint fundraising proceeds is reportable by each participating candidate's principal campaign committee as a transfer in with an explanation on Schedule A stating that the transfer is a receipt of proceeds from joint fundraising with the DSCC. The amount disclosed on Schedule A and the summary page should be the actual amount of the transfer. However, each campaign committee must file a memo Schedule A, designated as related to the joint fundraising effort, which itemizes the candidate's share of each gross contribution originally received and reported by the DSCC if that share (together with previous contributions from the same individual in the same calendar year) exceeds \$100. The candidates' campaign committees would not be required to report expenditures made in connection with the fundraising effort if those expenditures are reported by DSCC.

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