FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 9, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-7

Mr. David A. Sweeney
Legislative and Political Director
Democratic Republican Independent Voter Education
25 Louisiana Avenue, N.W.
Washington, D.C. 20001

Dear Mr. Sweeney:

This responds to your letter of January 12, 1981, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to two fundraising ventures contemplated by the Democratic Republican Independent Voter Education Political Action Committee ("D.R.I.V.E.")[1]

Your letter states that the first fundraising venture ("Plan A") involves the use of the membership list of a Teamster-affiliated local union by a firm that offers a credit card protection service. The membership list would be used by the firm for the purpose of soliciting business from union members. In exchange for use of the list, the firm would pay the local union the first yearly charge of those union members on the list who contract for the service. Under Plan A, the local union would use the payments received from the commercial vendor as a funding source for political contributions or expenditures by D.R.I.V.E. You ask whether D.R.I.V.E. in cooperation with an affiliated Teamster local, may enter into such an agreement with the firm to raise funds for D.R.I.V.E.

As you know, it is unlawful for any corporation or any labor organization to make a contribution to a political committee. See 2 U.S.C. 441b and 11 CFR 114.2(b). Section 441b(b)(2) defines a "contribution" to mean, in part, "any payment, ... or gift of money or anything of value..." to a political committee in connection with any Federal election. Your request indicates that Plan A is intended to raise funds for D.R.I.V.E. by using the membership list of the

[1] D.R.I.V.E. is the separate segregated fund of the International Brotherhood of Teamsters ("Teamsters"), a labor organization. As such the fund's name must include the name of its connected labor organization, the Teamsters. 2 U.S.C. 432(e)(5) and 11 CFR 102.14(c), also see Advisory Opinions 1980-23 and 1980-10, copies enclosed.

sponsoring union as a kind of "asset" that is "exchanged" for payments from a commercial vendor. The Commission has previously concluded that most[2] fundraising by political committees through the "sale" of items or assets results in a contribution by the person who "purchases" the item from the political committee. See Advisory Opinions 1979-76 and 1979-17, (copies enclosed). The Commission stated in those opinions (and others cited therein) that the contributor's receipt of something of value did not change the character of the activity from a political contribution into a commercial sale/purchase transaction. Thus the full amount of all payments received by D.R.I.V.E. from the credit card protection firm for use of the local affiliate's membership list is a contribution.

Your request suggests that Advisory Opinion 1979-18 may have relevance to Plan A. The Commission does not believe that opinion presents a similar situation. In that opinion the Commission recognized that in the circumstances there presented, a contributor list could be "sold" by a political committee without a contribution resulting from the "sale." Similarly, in Advisory Opinion 1979-24 (copy enclosed) the Commission permitted excess campaign assets (typewriter and sign stakes) to be sold by a political committee without a contribution resulting from the sale. In those situations, as distinguished from that presented in Plan A, the items sold were either campaign equipment which was originally purchased for and used during the campaign by the campaign committee and then sold with the proceeds applied to satisfy its debts so the committee could terminate; or an asset (i.e. the contributor list) the value of which was developed by the committee in the normal course of its operations and primarily for its own use rather than to sell to others. See Advisory Opinion 1979-76 citing Advisory Opinions 1979-18 and 1979-24.

Neither situation involved the use of a thing of value that was available to a separate segregated fund of a labor organization or corporation. In this case the membership list is that of the local Teamsters union, rather than a list of contributors to a political committee. Moreover, the membership list is proposed to be used to raise contributions for D.R.I.V.E. from persons (i.e. the credit card protection firm) who may not be solicited therefor. Accordingly, because the funds resulting from the sale of the local union's membership list under Plan A results in a contribution being made by the purchaser, the Commission concludes that Plan A may not be used to raise funds for D.R.I.V.E. Plan A would result in a contribution prohibited by 2 U.S.C. 441b if the credit card protection firm is a corporation. If not incorporated, the resulting contribution is still prohibited because it would be solicited from a person who is outside the solicitable class of the labor organization. See 11 CFR 114.5(g)(2).

The second fundraising venture ("Plan B") involves the sale of jackets bearing the insignia of D.R.I.V.E. (or similar insignia) to members of local unions affiliated with the Teamsters and their families. D.R.I.V.E. would purchase the jackets from a manufacturer at fair market value and would offer the jackets to individual members of local Teamster affiliates. Any profit made from the sales would be deposited in the separate segregated fund of D.R.I.V.E. to be used for political purposes. Steps would be taken to insure that only members of affiliated local unions and their families would be solicited. In addition, the offer of the jackets would

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[2] In some limited circumstances contributions may not occur but those cases are narrow exceptions to the general rule that the Commission has applied in numerous advisory opinions. See the discussion below regarding Advisory Opinions 1979-24 and 1979-18.

include a "clear and visible statement" that all monies derived from the sale would be used by D.R.I.V.E. for political purposes. You ask whether such a fundraising device would be prohibited by 2 U.S.C. 441b(b)(3)(A) as being funds raised through a commercial transaction. The Commission answers this in the negative.

As stated earlier in this opinion, the Commission has previously concluded that the full amount paid by a purchaser to a political committee or candidate for a fundraising item is a contribution, and that the contributor's receipt of something of value in exchange for the contribution does not change the character of the activity from a political contribution into a commercial transaction. Thus, funds received by D.R.I.V.E. from sales of the jacket are contributions from the individuals purchasing those jackets and not funds raised through a commercial transaction. Accordingly, so long as receipt of the contributions is properly reported by D.R.I.V.E., Plan B would be permissible under the Act.[3]

You have also asked, in connection with Plan B, whether the Teamsters may use its general treasury funds to purchase the jackets from the manufacturer rather than using D.R.I.V.E. funds to purchase the jackets. Under the Act, a corporation or labor organization is permitted to establish, administer, and solicit contributions to its separate segregated fund. 2 U.S.C. 441b(b)(2)(C) and 11 CFR 114.5(b). Corporations and labor organizations may not, however, use the establishment, administration, and solicitation process as a means of exchanging general treasury monies for contributions. 11 CFR 114.5(b). Thus while a corporation or labor organization may use a raffle or other fundraising device involving a prize, such organization may do so only if state law permits and the prize is not disproportionately valuable in relation to the contribution it generates. See 11 CFR 114.5(b)(2). Moreover, the prizes offered may not be so numerous or so disproportionately valuable in relation to the cost that the fundraising procedure is, in effect, a "trading" money situation. Accordingly, the Commission's regulations provide that a reasonable practice is for the separate segregated fund to reimburse the corporation or labor organization for costs which exceed one-third of the money contributed. 11 CFR 114.5(b)(2). See also Explanation and Justification of the Commission's Regulations, H.Doc. No. 95-44, 95th Cong., 1st Sess., January 12, 1977, p. 107; and Advisory Opinion 1979-72 copy enclosed. In light of the fact that a labor organization is permitted to pay the costs of soliciting contributions to its separate segregated fund, the Commission concludes that so long as D.R.I.V.E. reimburses the Teamsters for the cost of obtaining the jackets from the manufacturer, which exceed one-third of the total money contributed for them, it is permissible for the Teamsters to pay for the jackets from its general treasury funds.

The other issue raised in your request is whether the solicitation to purchase the jackets, directed to individual members of the Teamsters, may be made through an advertisement in the Teamsters' national magazine. You state that circulation outside the Teamster organization would be "no more than 3,217 out of an average total circulation of 1,966,861." (i.e. .16% of the total circulation). Under the Act, it is unlawful for a labor organization, or a separate segregated

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[3] Any contribution received by D.R.I.V.E. from the sale of the jackets is, of course, subject to the limitations and prohibitions of the Act. See 2 U.S.C. 441a, 441b, 441c, and 441e. One of those restrictions is that, while suggestions may be made as to the amounts of contributions, it must be made clear that more or less than the suggested amount may be contributed, 11 CFR 114.5(a). Thus, although jackets may be given only to those contributing a designated minimum amount, it should be explained that any other amount may be contributed.

fund established by a labor organization, to solicit contributions to such fund from any person other than its members and their families. 2 U.S.C. 441b(b)(4)(A). The Commission has, however, permitted a labor organization to publish in its national magazine a solicitation for contributions to its separate segregated fund where there was an "incidental" (i.e. 3%) circulation of the magazine outside the permissible class of persons that the labor organization could solicit. See Advisory Opinion 1978-97 and compare Advisory Opinion 1980-139, copies enclosed. In Advisory Opinion 1978-97 the Commission also based its approval on the precautionary steps the labor organization would undertake to avoid soliciting persons other than those whom it was permitted by the Act to solicit. Accordingly, so long as there is an explicit caveat in contrasting print in the advertisement that D.R.I.V.E. will not accept contributions from nonmembers of the Teamsters and further, that D.R.I.V.E. will screen and return all contributions (whether to "purchase" jackets or otherwise) received at any time from persons who are not solicitable by the Teamsters or D.R.I.V.E., the Commission concludes that an advertisement concerning the above-described Plan B in the national Teamster magazine is permissible under the Act.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity described by your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosures (AOs 1980-139, 1980-23, 1980-10, 1979-17, 1979-18, 1979-24, 1979-76, 1979-72, 1978-17, 1978-97)