



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-4

Lee Witt
Jerry Apodaca for U.S.
Senate Committee
P.O. Box 370
Sante Fe, New Mexico 87501

Dear Mr. Witt:

This responds to your letters of January 28, and April 5, 1982, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the proper reporting of office renovation and rent expenses of the Jerry Apodaca for U.S. Senate Committee ("the Committee").

Your January 28 letter states that in July, 1981, the Committee contracted with the owner of a vacant building to rent space for Committee headquarters. The building was a semi-warehouse and needed extensive renovations (partitioning, rewiring, painting, installation of bathroom and kitchen facilities, carpeting, etc.) prior to the Committee's occupation of the premises on September 1, 1981. You state that an agreement was made with the owner of the property for the costs of the renovations to be applied toward the rental fee otherwise payable by the Committee. You note that the labor was voluntary, while some of the materials used in the renovation were donated and some were purchased.

Your April 5 letter explains that in determining the value of the labor for carpentry work and painting, the Committee used the general handyman rate of \$6 per hour. The work was done by a volunteer force of 24 men, and the total hours worked was 540 1/2 hours. You state that the labor costs for plumbing and heating were \$2,740; and that this quotation was given by the three professional plumbers who did the actual work in renovating one bathroom, replacing the fixtures, installing fixtures in a new bathroom and kitchen, and repairing the heating system. The costs for the fixtures themselves were \$485. The cost of the electrical work was the value placed

on the job by the two professional electricians, plus one assistant, who did the actual work. It includes the upgrading of the wiring system of the building and adding new lighting fixtures. The cost for the electrical work was \$1,725 which includes the costs for the fixtures as well as the "value of the volunteer labor." Finally, the \$800 for the carpeting was the quoted value given to the Committee by the professional carpet-layer who purchased used carpet for the Committee and donated the labor involved in installing it. Your January 28 letter states that the total cost of the renovations was \$10,574.09.

In response to the Commission's letter to you of February 12, 1982, your April 5 letter enclosed a copy of the lease entered into on behalf of the Committee with the lessor.¹ The lease provides that the rent shall be at the rate of \$950 per month by cash or by the expenditure of that sum in labor and materials for improvements or alterations to the premises, which alterations and improvements may thereafter be removed by the Committee only if the lessor so desires. The lessor has the option to require that the improvements made by the Committee remain on the premises. You ask the Commission's opinion as to how these transactions should be reported by the Committee.

This question raises the issue whether the volunteer services, building materials, and the lessor's reductions in rent are contributions to the Committee for purposes of the Act. The Act defines contribution to include gifts of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. 431(8)(A)(i). Commission regulations follow this definition and also provide that the term "anything of value" includes all inkind contributions including, by example, such goods or services as facilities and equipment if they are provided without charge or at a charge less than the usual and normal charge. 11 CFR 100.7(a)(1)(iii). A specific exemption is made in the Act for the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee. 2 U.S.C. 431(8)(B)(i). Activity coming within this exemption is not a contribution. 11 CFR 100.7(b)(3). The Commission's opinion with respect to application of these provisions to the Committee's specific situation is set forth as follows.

Volunteer Labor

As indicated, the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee is exempted from the definition of contribution. 2 U.S.C. 431(8)(B)(i). Accordingly, the value of the volunteer services provided by the various carpenters, plumbers, electricians, carpet-layer, and other tradesmen, need not be reported by the Committee. See Advisory Opinions 1980-42, 1980-34, 1979-35 and compare Advisory Opinion 1982-24. Copies enclosed. In this regard, the Commission notes, however, that the payment by any person of compensation for the personal services of another person which are rendered to a political committee (without charge to the political committee) is considered a contribution under the Act and is subject to the limitations and prohibitions of the Act. 2 U.S.C. 431(8)(A)(ii), and see 2 U.S.C. 441a, and 441b. Thus, if any of the individuals were paid by their employer or by another person for the work that he/she did in the renovation of the premises, those payments would be considered contributions to the Committee by payor.

¹ The lease agreement discloses that the lessor is an individual.

As contributions they would be subject to the prohibitions, limitations, and disclosure requirements of the Act and regulations.

Materials

As to the materials paid for by the Committee, those expenditures would be reported as disbursements by the Committee. (See FEC Form 3, line 17). Any such disbursements by the Committee which are in excess of \$200 to a particular person must be itemized pursuant to Commission regulations at 11 CFR 104.3(b)(3).

Any materials used in the renovation which were donated to the Committee must be reported as an in-kind contribution to the Committee. See 11 CFR 104.3(a)(2). The donated materials would be reported as contributions from the donors, and, as contributions, are subject to the limitations and prohibitions of the Act. See 2 U.S.C. 431(8)(A)(i), 441a, and 441b. Thus the Committee will be required to determine the usual and normal charge for all donated materials used in the renovations and report such materials as contributions. Any such contributions in-kind must be within the donor's limits and may not be contributed by any corporation or labor union or other person who is prohibited by the Act from making a contribution. See 2 U.S.C. 441b, 441c, 441e and 441f.

Offset in Rent

The offset to operating expenditures which the Committee will realize as a result of the renovation should be reported as a receipt entry on FEC Form 3, Line 14, Offsets to Operating Expenditures. The entry should be listed as a receipt from the lessor and clearly annotated "Offset of Tenant Financed Improvements Against Rent." The rent expense should then also be reported as an expense entry on FEC Form 3, Line 17, Operating Expenditures, and noted as a non-cash offset against the value of the Committee's improvements. The offset of the improvements against the rent could be reported as either a single entry (i.e. the entire transaction on one report) for the entire lease period, or as monthly entries of \$950 until the offset credit is exhausted. The Commission notes, however, that the Committee may not take as an offset the value of any of the improvements which, at the end of the lease period, are removed from the property by the Committee.² In addition, if at the end of the Committee's occupancy of lease period, the lessor directs that the Committee remove any improvements and alterations, a question may be raised and require further Commission review as to whether the offset agreement with the Committee was in accord with the lessor's usual and normal charge and practice with respect to commercial leases. In this connection Commission regulations require that nonexempt goods and services provided to a political committee be paid for at the usual and normal charge to avoid a contribution. 11 CFR 100.7(a)(1).

² Any costs to the Committee of removing such fixtures must be reported as an expenditure on FEC Form 3, Line 17.

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

Sincerely yours,

(signed)

Frank P. Reiche
Chairman for the
Federal Election Commission

Enclosures (AOs 1982-24, 1980-42, 1980-34, and 1979-35)