FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 28, 1985

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-1

Ms. Patricia A. Kery
Ratchford for Congress Committee
4850 Connecticut Avenue, N.W., Apt. #506
Washington, D.C. 20008

Dear Ms. Kery:

This responds to your letters of December 13, 1984, and January 7, 1985, requesting an advisory opinion on behalf of the Ratchford for Congress Committee ("the Committee") regarding application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the sale of the Committee's computer system.

You state that during the 1984 campaign cycle, the Committee purchased a computer system consisting of an IBM Personal Computer with one disk drive, a Fujitsu 85 megabyte hard disk, and a Fujitsu letter quality printer with both a tractor feed and a double bin cut sheet feeder. You state that the Committee paid approximately $14,000 for the system. You also explain that because Representative Ratchford was not re-elected, the Committee plans to terminate its activities, and therefore wishes to sell the computer system. The proceeds from this sale will be combined with the Committee's anticipated surplus funds and will be disbursed, along with the rest of the surplus, in a manner that has yet to be determined. Your request states that potential purchasers of the computer system include a number of private individuals, several former staff members, a House committee, a Senate committee, a corporation, a non-profit charitable organization, and a state committee. You indicate that Mr. Ratchford himself has no interest in purchasing the computer system.

Given this factual situation, you ask whether the Committee's proposed sale of its computer system, and distribution of the sale proceeds along with any other excess campaign funds it may have, is permissible. Assuming the sale is permissible, you also ask whether there are any restrictions as to the sale price or the purchaser.

The Commission concludes that the proposed sale of the computer system to any of the potential buyers listed in your request would be permissible provided that the purchaser pays no more than the usual and normal charge for the system, and assuming that the Committee terminates within a reasonable time after the sale is completed. The usual and normal charge for goods means the price of those goods in the market from which they ordinarily would have been purchased. See 11 CFR 100.7(a)(1)(iii)(B) and 11 CFR 100.8(a)(1)(iv)(B). In this case the usual and normal charge for the Committee's system would be the market price for the same equipment in the same condition (e.g., state of repair, future useful life, extent of obsolescence, etc.). See also Advisory Opinions 1984-60 (footnotes two and five) and 1979-24. Once the sale of the computer system has been completed, the Committee may then use the proceeds from the sale, along with its other excess campaign funds, for any of the purposes described in 2 U.S.C. 439a. These purposes include contributions to any organization described in 170(c) of title 26 and transfers without limitation to any national, state, or local committee of a political party.

To the extent the Committee receives more or less than the usual and normal charge for the computer system, other issues may arise with respect to application of 2 U.S.C. 441a and 441b. Because the Commission assumes, for the purposes of this opinion, that the purchaser of the computer system will pay the usual and normal charge, these issues are not addressed herein.

Finally, the Commission notes that the Committee's failure to terminate within a reasonable time after the sale of the asset in question would present a different factual situation and might require a different conclusion. If the Committee were to sell the asset but remain in existence as a multicandidate committee or as a principal campaign committee for a future Federal election, the conclusion reached herein might not apply. The Commission also notes that the situation presented here is distinguishable from that presented in Advisory Opinion 1983-2. In that opinion the Commission concluded that business or commercial-type ventures of ongoing political committees are simply another form of raising funds for political purposes, and therefore the proceeds from such ventures are considered contributions subject to the Act. See Advisory Opinion 1983-2 and opinions cited therein.

The Commission expresses no opinion as to the tax ramifications in this situation since those issues are not within its jurisdiction.

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)

John Warren McGarry
Chairman of the Federal Election Commission

Enclosures (AOs 1984-60, 1983-2, and 1979-24)