FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 4, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1993-1

The Honorable Dan Burton
2411 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Mr. Burton:

This responds to your letter of January 5, 1993, requesting an advisory opinion regarding application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to your plan to build and lease a campaign storage facility.

You represent the Sixth Congressional District of Indiana. The Dan Burton for Congress Committee (the "Committee") is your registered principal campaign committee. You state that you would like to build a medium-sized storage shed to store your campaign records and assorted campaign materials. You plan to build this shed on your "personal property" and pay for it with your personal funds. You would then charge rent to the campaign for the use of the facility. The rent, you state, would be equivalent to that charged by temporary storage facilities in the same area. You further state that "the shed is intended for campaign materials while the campaign is paying rent, and the campaign will cease paying rent when the shed is no longer being used for campaign purposes." You ask whether this arrangement is permissible under the Act and Commission regulations.

Under the Act, the term "contribution" includes any gift, subscription, loan, advance or deposit 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 provide that "anything of value" encompasses providing any goods or services, including equipment, without charge or at a charge which is less than the usual and normal charge for such goods or services. 11 CFR 100.7(a)(1)(iii). Goods or services provided at the usual or normal charge are not considered contributions. Id. The regulations define "usual and normal charge" for goods to be the price of

those goods in the market from which they ordinarily would have been purchased at the time of the transaction. 11 CFR 100.7(a)(1)(iii)(B).

The Commission has previously stated that, under the Act and Commission regulations, a candidate and the candidate's campaign committee have wide discretion in making expenditures to influence the candidate's election, but may not convert excess campaign funds to personal use. 2 U.S.C. 431(9) and 439a; Advisory Opinions 1992-4, 1992-1 and 1992-12.[1/]

In past opinions, the Commission has held that campaign committees may pay a portion of the candidate's rent where campaign staff use a candidate's apartment for lodging, may pay rent to a candidate for campaign office space in a candidate's house, and may pay a portion of the rent of a candidate's residence where a part of the house is used for campaign equipment storage. See Advisory Opinions 1985-42, 1983-1 and 1978-80. In particular, your situation is similar to that considered in Advisory Opinion 1988-13 where a candidate who owned a building, wished to rent storage and office space in the building to his campaign. The Commission agreed that such payments would not violate the Act.[2/] Given these precedents, the Commission concludes that your proposed arrangement is permissible under the Act and Commission regulations.[3/] The rental payments should be disclosed by the Committee as operating expenditures as required by the Act and Commission regulations. See 11 CFR 104.3(b)(2).

The Commission expresses no opinion as to any application of the rules of the House of Representatives to your activity, nor as to any tax ramifications, since those issues are outside the Commission's jurisdiction.

This response constitutes an advisory opinion concerning the 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,

(signed)

Scott E. Thomas
Chairman

Enclosures (AOs 1992-12, 1992-4, 1992-1, 1988-13, 1985-42, 1983-1 and 1978-80)

ENDNOTES

1/ You are a Member of the 103rd Congress and are, therefore, prohibited from converting campaign funds to personal use. However, the issue of personal use would not appear to arise in this opinion since you intend to use your own personal funds to build the storage facility, to charge rent to the Committee at the comparable commercial rate and to charge rent only for the period while the facility is used for campaign purposes. See also discussion at footnote 2 below.

2/ However, the Commission also stated "[i]f such rental payments by a candidate's campaign committee represent more than the usual and normal charge for the use of the facilities in question, the amount in excess of the usual and normal charge would be subject to the personal use ban of 2 U.S.C. 439a." Advisory Opinion 1988-13.

3/ You have stated that the Committee will pay the same rent it would have paid if it had rented storage facilities elsewhere. An issue in past opinions is whether a payment or lease agreement between a candidate and his committee is consistent with normal business practices. If a Committee pays less than it otherwise might, this would constitute a contribution by the candidate to the Committee which, though legal, would need to be reported. See Advisory Opinions 1988-13 and 1983-1.