

FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 1, 1980

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-4

Robert S. Strauss, Chairman
Carter/Mondale Presidential Committee, Inc.
1413 K Street N.W.
Washington, D.C. 20005

Dear Mr. Strauss:

This responds to your letter of January 14, 1980, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended (the "Act"), to legal services provided to the Carter/Mondale Presidential Committee (the "Committee") for preparation of a defense to a civil action in which the Committee is one of the named defendants.

Your request states that a complaint was filed in United States District Court for the District of Columbia with the caption Winpisinger v. Watson, Civ. No. 79-3471(D.D.C., filed December 28, 1979), in which various Cabinet members and White House staff members as well as the Committee have been named as defendants. The complaint alleges violations of 31 U.S.C. 628 (Appropriations Act), 5 U.S.C. 7324(a)(1) (Hatch Act), as well as infringement of plaintiffs' first and fifth amendment constitutional rights virtue of various alleged acts that are said to "devalue and competitively disadvantage" plaintiffs' political support for Senator Edward Kennedy. The complaint specifically alleges that the committee has not properly allocated costs between political and official travel and has not properly reimbursed the Government for such travel.

Your request explains that several law firms are willing to permit their lawyers, and law firm support personnel, to assist the committee in the defense of this lawsuit. The law firms are willing to continue the full normal compensation otherwise payable to the personnel who work on this litigation. The services of at least some of the personnel will occur during regular work hours that would normally be considered as compensated time rather than volunteer time. The specific question presented is whether the compensation attributable to these legal services which are rendered without charge to the Committee is a contribution by the firms to the Committee for purposes of the Act.

The Act, as amended by the Federal Election Campaign Act Amendments of 1979, 1/ provides that contribution includes any gift or advance of money or anything of value made by any person for the purpose of influencing any election for Federal office.2/ Contribution also includes compensation paid by one person for personal services of another that are rendered to a political committees without charge. 2 U.S.C. 431(8) (A). 3/ Commission regulations indicate that contributions in the form of compensation occur when the compensated services consist of

"political activity," i.e., services engaged in for the purpose of influencing an election to Federal office. 11 CFR 100.4(a)(5).

In the circumstances presented in your request the Commission concludes that a contribution does not result since the compensation paid for legal services enables the Committee to present a defense to a civil complaint, as distinguished from permitting compensated personnel to engage in the Committee's political activities. The Commission does not believe there is any basis under the Act for treating donated legal services to defend against a civil action as services rendered for the purpose of influencing the election of any person to Federal office. In this situation the Committee has no choice but to defend itself or admit the violations alleged by the plaintiff. Thus the donated legal services do not present the Committee with anything of value that may be utilized for the purpose of influencing any election to Federal office.

In addition, to characterize the donated legal services as contributions in this case would force the Committee to charge the legal expenses to their expenditure limit under 2 U.S.C. 441a(b) since the receipt of a contribution (in kind) results in a corresponding expenditure. 11 CFR 104.3 (a). This result could, in turn, lead to the situation where any committee similarly situated would have to use up its expenditure limit (and perhaps its funds as well if donated legal services were not available) in defending law suits, rather than in campaigning for the Presidency.

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.

1/ See section 101 of Public Law 96-187, effective January 8, 1980.

2/ An exemption exists for legal services which are rendered "solely for the purpose of ensuring compliance" with the Act. 2 U.S.C. 431(8)(B)(ix), as amended by the 1980 amendments.

Although some aspects of the law suit may indirectly affect reporting under 11 CFR 106.3 of Commission regulations, the legal services in question will be provided to assist with the Committee's defense to allegations in the complaint of violations of laws other than the Act.

3/ While the phrasing of the 1980 Amendments is slightly different from 2 U.S.C. 431(e)(4), as amended in 1976, with respect to treating compensation payments as contributions when paid for the purpose of influencing a Federal election, the legislative history of the 1980 amendments gives no indication of any legislative intent to eliminate the "purpose of influencing" test when compensation payments are made for services rendered to a political committee. See H.R. Rep. No. 96-422, 96th Cong., 1st Sess. 6, 7 (1979).