



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 12, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-78

Mr. Don L. Richardson
Republican Candidate for U.S. Senate
10635 I. H. 35 North
San Antonio, Texas 78233

Dear Mr. Richardson:

This responds to your letters of June 18 and July 23, 1980, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and relevant regulations to the proposed use of data reported by other candidates in your campaign solicitation letter.

According to your request, you plan to obtain from reports filed with the Commission the total campaign expenditures of other candidates in previous elections. You propose to include this information as part of your campaign solicitation letter. This data will encompass only the total campaign disbursements and will not contain any information pertaining to the identity of contributors. You ask whether the Act's prohibition against the sale or use of any information copied from reports or statements filed with the Commission "for the purpose of soliciting contributions or for commercial purposes" would apply. 2 U.S.C. 438(a)(4).

The focus of the proponents of 2 U.S.C. 438(a)(4) centered on protecting the privacy of the "very public spirited citizens" who make contributions to campaigns. The principal, if not sole, purpose of the provision was to protect contributor information and lists from being used for commercial purposes. 117 Cong. Rec. 30058 (1971) (remarks of Senator Bellmon, amendment sponsor). The Commission's regulations, at 11 CFR 104.15 reinforce this prohibition against the sale or commercial use of any information copied from reports and statements filed with the Commission. An exception to the stated restriction allows the use of information copied or gained from reports filed with the Commission in newspapers, books, magazines, or other similar publications. This use is permissible "only if the principal purpose of such

communications is not to communicate contribution information ... for purpose of soliciting contributions or for other commercial purposes." 11. CFR 104.15(c).

The prevention of list brokering, not the suppression of financial information, is the purpose of 2 U.S.C. 438(a)(4) and 11 CFR 104.15. The Commission has reiterated this aim in several previous advisory opinions. In Advisory Opinion 1977-66 the Commission decided that a political committee's use of its own contributor list did not involve the type of list brokering envisioned by the drafters of the Act or the regulations. The Commission, in Advisory Opinion 1979-3, concluded that a political committee could donate, sell, or rent contributor lists compiled from its own records but could not broker any list copied or obtained from disclosure reports filed with the Commission.

It is the opinion of the Commission that the proposed use of the described campaign expenditure data does not fall within the prohibition contained in 2 U.S.C. 438(a)(4) and 11 CFR 104.15. The express legislative intent of the provision does not seem to encompass the use of financial information about other candidates in previous elections particularly where, as here, no information relating to the identity of contributors is given.

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

Sincerely yours,

(signed)

Max L. Friedersdorf
Chairman for the
Federal Election Commission

Enclosures