



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 19, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-53

William G. Frazier
4211 North Broadway
Muncie, Indiana 47303

Dear Mr. Frazier:

This responds to your letters dated October 23 and November 13, 1981, supplemented by your letter dated January 5, 1982, requesting an advisory opinion on behalf of your campaign committee, the Bill Frazier for Congress Committee, concerning application of the Federal Election Campaign Act of 1971, as amended, ("the Act"), and Commission regulations to the Committee's sale of its mailing list to a corporation.

You indicate that the Bill Frazier of Congress Committee, ("the Committee"), developed its mailing list by compiling names from publicly available voter registration lists in Indiana. Approximately 80,000 names of residents in five counties in Indiana were compiled by "family members" and placed on seventeen magnetic tapes. You state that the expenses incurred by the Committee to generate this mailing list totaled \$4,216 including travel expenses, supplies, copying forms, labor and equipment.

You ask specifically whether the Act would permit the committee to sell the seventeen magnetic tapes containing the described mailing list to Professional Data Processing Corporation, ("the Corporation"), for the sum of \$4,000. You state that neither you nor anyone acting on behalf of the Committee will retain the originals of any of the tapes or retain any future right to use either the computer tapes or the information contained on the tapes.

The issue raised by your request is whether payment by the corporation to the Committee for the computer tapes containing the mailing lists developed by the Committee, would constitute a corporate contribution prohibited by 2 U.S.C. 441b.

The Commission is of the opinion that the Act would permit the Committee to sell its mailing list on computer tape to the Corporation provided that the price that the Committee

charges the Corporation for the tapes represents the "usual and normal charge" for such tapes under the provisions of 11 CFR 100.7(a)(1)(iii). That section provides that "the 'usual and normal charge' for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution...." Thus, as long as the Committee charges the Corporation the "usual and normal" rate for the tapes, a prohibited corporate contribution would not occur. You state that the price of \$4,000 set for the tapes by the Committee was "determined to be the fair market value of this material in this area."

The Commission has held in factual situations involving the sale of assets of a campaign committee, that if the asset in question has been developed by the campaign committee in the normal course of its operation, and the asset is developed primarily for the campaign committee's own use rather than for sale to others in the form of a fundraising item, the sale of the asset to a corporation does not result in a prohibited corporate contribution provided that the requirements of 11 CFR 100.7(a)(1)(iii) are met. See Advisory Opinions 1979-24, 1979-18, copies enclosed.

Thus, in the situation presented by your request, the sale of the computer tapes to the Corporation by the Committee would be permissible under the Act, provided that the price that the Committee charges the Corporation for the mailing list represents the "usual and normal" rate for the tapes at the time of the sale.

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,

(signed)

Frank P. Reiche
Chairman for the
Federal Election Commission

Enclosures (AOs 1979-24 and 1979-18)