



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 13, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-2

The Honorable Phil Gramm
Drawer AO
College Station, TX 77840

Dear Representative Gramm:

This responds to your letter of January 6, 1984, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to a letter you propose to send to individual contributors listed on reports filed with the Commission by "Americans for Phil Gramm in '84" (hereinafter referred to as "Americans").

According to your request, "Americans" has been soliciting contributions without your authorization. You believe that persons have been misled into contributing to that organization because the contributors assumed that "Americans" was your authorized campaign committee. You anticipate that the organization will file reports with the Commission disclosing the identities of contributors. You propose to write a letter to these contributors in which you will inform them (1) that "Americans for Phil Gramm in '84" is not authorized by you as your campaign committee and (2) that "Friends of Phil Gramm (hereinafter "Friends") is your only authorized campaign committee and will advise contributors (3) that they may ask for a refund of their contributions to "Americans", and (4) that they may instead make a contribution to "Friends."

Although the Act generally allows for inspection and copying of reports and statements filed with the Commission, it prohibits the use or sale of such information for the "purpose of soliciting contributions or for commercial purposes" 2 U.S.C. 438(a)(4); 11 CFR 104.15(a). "Soliciting contributions" includes soliciting any type of contribution or donation, such as political or charitable contributions. 11 CFR 104.15(b). An exception to this restriction allows for the use of information copied or otherwise obtained from records filed with the Commission in newspapers, magazines, books, or similar communications, but only if the principal purpose of these communications is not to communicate any contributor information for the purpose of soliciting contributions or for other commercial purposes. 11 CFR 104.15(c).

The proponents of 2 U.S.C. 438(a)(4) focused on protecting the privacy of the "very public spirited citizens" who make contributions to campaigns. Thus, the purpose of this section was to protect contributor information and lists from being used for contribution solicitation or for commercial purposes. 117 Cong. Rec. 30057-58 (1971) (remarks of Senator Bellmon, amendment sponsor). Subsequent legislative history further reinforces this view. Specifically, the history of the 1979 Amendments to the Act indicates that a commercial vendor may compile information from FEC reports for the purpose of selling that information, but that the prohibition on copying and use of names and addresses of individual contributors is crucial and so was maintained. H.R. Rep. No. 422, 96th Cong., 1st Sess. 23 (1979). The purpose of 2 U.S.C. 438(a)(4) is the prevention of list brokering, not the suppression of financial information. See Advisory Opinions 1983-44, 1981-38, and 1980-78. The prohibition is intended to prevent the use of contribution information taken from disclosure documents filed under the Act to make solicitations. It is not intended to foreclose the use of this information for other, albeit political, purposes, such as correcting contributor misperceptions. See Advisory Opinion 1981-5.

Accordingly, the Commission concludes that informing contributors to "Americans" for Phil Gramm in '84" that it is not your authorized campaign committee and identifying "Friends of Phil Gramm" as the name of your authorized campaign committee for the purposes of setting the record straight would not be a prohibited use of contributor information under 2 U.S.C. 438 (a)(4) or Commission regulations at 11 CFR 104.15. In addition, your mailing could also include a suggestion that the contributor ask for a refund from "Americans," although neither the Act nor Commission regulations accord contributors any right to refunds in this situation. Requesting or suggesting that contributions be made to your authorized campaign committee, however, would involve use of contributor information in a manner that is prohibited by 2 U.S.C 438(a)(4) and 11 CFR 104.15. The Commission also notes that because contributions to "Americans" are seemingly made with the knowledge that they would be expended on behalf of Phil Gramm, the amount of any contribution would be attributable to a contributor's maximum allowable contribution to Phil Gramm. See 11 CFR 110.1(h).

Of course, this response does not express any opinion on the specific language of any letter actually sent to contributors to "Americans for Phil Gramm in '84." Furthermore, any disbursements made by your campaign committee in preparing and sending such a letter would be subject to the reporting requirements of the Act and regulations. 2 U.S.C. 434(b) and 11 CFR 104.3(b).

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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)

Lee Ann Elliott
Chairman for the

Enclosures (AOs 1983-44, 1981-38, 1981-5 and 1980-78)