FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 17, 1987

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-25

Ricardo A. Otaola
3101 New Mexico Avenue, N.W.
Washington, D.C. 20016

Dear Mr. Otaola:

This responds to your letter of July 21, 1987, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to uncompensated volunteer services performed by a foreign national in a 1988 presidential campaign.

Your letter states that you are a Venezuelan citizen and have been in the United States for the past eight years as a student of international relations and international business. You indicate that you have developed a great interest in American politics and the electoral process in general. While you remain in the United States, you would like to work, without any compensation, as a volunteer for a 1988 presidential campaign. You ask whether such activity is permitted under the Act.

As a foreign national you are prohibited, either directly or through any other person, from making a "contribution of money or other thing of value...in connection with an election to any political office... ." 2 U.S.C. 441e. You state, however, that you intend to work solely as an uncompensated volunteer for a 1988 presidential candidate. Volunteer services by individuals are specifically exempt from the definition of "contribution" contained in the Act. The statutory language provides that "the term 'contribution' does not include -- (i) the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee." 2 U.S.C. 431(8)(B)(i). Your work as a volunteer without compensation would not, therefore, result in a contribution to a candidate because the value of uncompensated volunteer services is specifically exempted from the definition of contribution under the Act.* See, e.g., Advisory Opinion 1984-43 (donation of corporate officer's volunteer services to appear

in a candidate's TV spot not considered a contribution) and Advisory Opinion 1982-31 (a student may volunteer uncompensated services to a campaign without making a contribution).

This conclusion is consistent with the statutory changes Congress has made with respect to foreign nationals. The foreign national prohibition was originally enacted as 18 U.S.C. 613 in 1966 when Congress amended the Foreign Agents Registration Act of 1938 ("FARA"). 80 Stat. 244 (1966). At that time the term "contribution" was not subject to any statutory definition in either Title 18 or in FARA. See 18 U.S.C. 591(1970) and 80 Stat. 244 (1966). In the 1976 amendments to the Act, however, Congress repealed 18 U.S.C. 613 and reenacted the foreign national prohibition as Section 324 of the Act, codified at 2 U.S.C. 441e. 90 Stat. 486, 493, 496 (1976). In doing so, Congress provided that the prohibition was governed by the definitions, and their exemptions in 2 U.S.C. 431. Although it amended the statute in 1971, 1974, 1976, and 1979, Congress never expanded the Act's definition of contribution, or restricted the Act's exemptions from such definition, for purposes of the foreign national prohibition. In contrast, the prohibition has always been applicable in connection with any election whether Federal, state, or local. See 11 CFR 110.4(a)(1). Thus, by repealing and reenacting the foreign national prohibition as part of the Act in 1976, and by amending the definitions which govern interpretation of the term "contribution" as used in the Act, Congress has limited the scope of the foreign national prohibition as to the meaning of the term "contribution," while retaining the aspect of the prohibition that extends to all elections.

The Commission has concluded herein that because uncompensated volunteer services are not considered to be a contribution under the Act, any individual, including a foreign national, may volunteer his or her uncompensated services to a candidate without making a contribution to that candidate. The Commission considered the extent to which this conclusion conflicts with Advisory Opinion 1981-51, and by a vote of 2-4 declined to supersede or overrule Advisory Opinion 1981-51.

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)

Scott E. Thomas
Chairman for the Federal Election Commission

Enclosures (AO 1984-43, 1982-31, and 1981-51.)

*/ While this may appear to be a discrepancy in the Act, it seems that Congress was not only aware of this provision but chose not to correct its potential effect. Representative Bill Frenzel stated that

> ...these loopholes make ambiguous the prohibitions on contributions in the name of another and contributions by unions, corporations and foreign nationals. Since the exemptions apply to these sections as well, if the Committee bill passes with the loopholes intact, the courts may decide that certain types of donations by unions, corporations and foreign nationals are permissible.

H.R. Rep. No. 93-1239, 93rd Cong., 2d Sess., at 141(1974), reprinted in Legislative History of Federal Election Campaign Act Amendments of 1974, at 775 (1977).