



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 15, 1994

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-20

Albert M. Edwards, Jr.
Treasurer, Committee for Congressman Charlie Rose
P.O. Box 1178 211 Fairway Drive
Fayetteville, NC 28302-1178

Dear Mr. Edwards:

This responds to your letter dated June 9, 1994, requesting an advisory opinion on behalf of the Committee for Congressman Charlie Rose ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the proposed gift of valuable Committee property.

The Committee is the principal campaign committee of Representative Charlie Rose who is a candidate for the 1994 election cycle. You state that the Committee presently owns a 1991 "Fleetwood Flair RV" which it has used exclusively as a mobile campaign office. The vehicle has no liens or other encumbrances, and its purchase price was paid in full at the time of purchase. [Committee reports filed with the Commission disclose that \$38,660 of Committee funds was paid on June 20, 1991, to Allsport RV Center in Fayetteville for a "Mobil Campaign Office . . . title and license."] You explain that the vehicle was used in the 1992 election cycle and thereafter until April 25, 1994, serving as a mobile office "enabling the candidate and other representatives of the campaign to travel around the seventh district of North Carolina and perform a variety of campaign related functions."

On April 25, the Committee purchased a campaign office and no longer uses or needs the vehicle for the campaign. It has learned, however, that the Health Department of Cumberland County, located in the 7th Congressional District of North Carolina, has a need for a similar vehicle. The Department would use the vehicle as a "mobile health clinic to reach the rural areas of the district." You add that any signs which identify Mr. Rose would be removed from the vehicle.

The Committee requests an advisory opinion permitting it to donate the vehicle to the Cumberland County Board of Health. The Committee proposes to transfer ownership of the vehicle to Cumberland County as a gift, and the Committee would receive no consideration for the transfer. Furthermore, it would not retain any "rights or interests of any kind" in the vehicle. You also state that the Committee would receive no tax benefit as a result of this transaction and intends "to avoid the receipt of consideration or other benefit."

The Act provides, in part, that amounts "received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures . . . may be contributed to any organization described in section 170(c) of title 26, or may be used for any other lawful purpose" except that such amounts may not be converted by any person to any personal use. 2 U.S.C. 439a. Commission regulations similarly provide that excess campaign funds may be contributed to any section 170(c) organization or may be used for any lawful purpose, but may not be converted to personal use. 11 CFR 113.2(b), 113.2(d).

The regulations define the phrase "excess campaign funds" to mean "amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures." 11 CFR 113.1(e). In several past advisory opinions, the Commission has concluded that non-cash assets of a candidate's campaign committee are also covered by the phrase "excess campaign funds" and may be lawfully distributed under 2 U.S.C. 439a and the cited regulations. Advisory Opinion 1990-11 [donation to charities of handcrafted, silver belt buckles initially contributed to candidate committee], Advisory Opinions 1984-50 and 1981-11 [donations of candidate caricature items and candidate committee's mailing list to party committees], Advisory Opinion 1982-33 [gift of campaign committee automobile to former Senator who was exempt from personal use ban]; see Advisory Opinion 1990-26 [cash proceeds from sale of computer owned by committee of retiring Member of Congress subject to same 439a rule as other committee funds].

In addition, the Commission has previously considered circumstances where a Member of Congress, who was also a candidate for re-election, determined that funds received by the campaign were in excess of amounts necessary to defray campaign expenditures. The Commission concluded that the principal campaign committee of the Member/candidate could donate the excess funds to a qualified section 170(c) organization. Advisory Opinions 1992-21 and 1985-9.

The cited regulations and opinions are relevant in many respects to the factual situation you describe. The Committee continues to operate as the principal campaign committee of a candidate who is seeking re-election. It owns an unwanted, but still valuable, noncash asset that it wants to donate to a local governmental entity which is described in 26 U.S.C. 170(c). The relevant part of 170(c) provides that any contribution or gift to a State or to any political subdivision of a State is a "charitable contribution" if it is "made for exclusively public purposes." The request indicates that the Committee vehicle will be donated to a county government for use by the county health department as a mobile health clinic serving a segment of the public. Therefore, the Commission concludes that the described Committee gift is expressly permitted under the 170(c) clause of 2 U.S.C. 439a. Accordingly, the Committee may

donate and transfer ownership of the vehicle to the Cumberland County, North Carolina, Health Department.

The Committee also seeks the Commission's advice as to how and when the transaction should be disclosed on Committee reports filed under the Act.

The Act and Commission regulations provide that the term "expenditure" includes the distribution of anything of value by any person for the purpose of influencing a Federal election. 2 U.S.C. 431(9)(A)(i), 11 CFR 100.8(a)(1). A principal campaign committee is required to identify each person to whom it makes an expenditure "to meet the committee's operating expenses" if the amount or value of the expenditure exceeds an aggregate (or total) amount of \$200 for the calendar year. 11 CFR 104.3(b)(4)(i), see 2 U.S.C. 434(b)(5)(A).^{1/} In addition, any such candidate authorized committee is required to identify any person to whom it makes any disbursement in an "aggregate amount or value" exceeding \$200 in the calendar year. 2 U.S.C. 434(b)(6)(A), 11 CFR 104.3(b)(4)(vi) [emphasis added].

In the situation presented here it appears that the described gift will not be delivered in any manner or circumstances indicating the Committee's purpose is to influence Mr. Rose's re-election. The request indicates that the Committee no longer has any need to use the vehicle for any campaign purpose and intends to avoid receiving any consideration or other benefit from making the gift.^{2/}

Accordingly, the Commission concludes that the gift is not an expenditure by the Committee, but is instead a Committee disbursement of something of value. It should therefore be reported as an "other disbursement" at fair market value, which can be determined from used motor vehicle pricing manuals (e.g. "blue book") covering North Carolina, by memo entry on a separate Schedule B for FEC Form 3. The transaction should be included in the Committee report covering the period when delivery of the vehicle is made to the County. As a memo entry, the Committee gift would not affect reported cash outlays or ending cash balance for the reporting period and would not be included in the amounts presented on the summary pages of the Committee's report.

The Commission expresses no opinion as to any tax ramifications related to the Committee's gift, nor as to the possible application of House rules to the gift, because those issues, if any, are not within its jurisdiction.

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.

For the Commission,

(signed)

Danny L. McDonald
Vice Chairman

Enclosures (AOs 1992-21, 1990-26, 1990-11, 1985-9, 1984-50, 1982-33, and 1981-11)

Endnotes

1/ The cited provisions further require that other information must also be disclosed if the expenditure or disbursement is required to be itemized. Namely, the date, amount and purpose of the transaction.

2/ The Commission notes that if the Committee delivers the vehicle to the County in circumstances where it is a campaign event, then the gift would be viewed as an expenditure to influence his re-election to Federal office. This would not bar the gift, but would require that it be reported as a campaign expenditure by the Committee, instead of as an other disbursement. The same memo entry reporting procedure, as discussed below, would apply.