



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 1, 1989

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1989-6

Thomas Graziano, Treasurer
Friends of Sherwood Boehlert
P.O. Box C
Utica, New York 13503

Dear Mr. Graziano:

This responds to your letter dated April 24, 1989, as supplemented by your letter dated May 9, requesting an advisory opinion on behalf of the Friends of Sherwood Boehlert ("the Committee") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the receipt and sale by a political committee of stock and the reporting of that receipt and sale.

Your request indicates that the Committee received a letter dated April 7, 1989, from Roger J. Sinnott stating that he had just made a contribution of 120 shares of stock that he owned in a corporation known as CONMED. The Committee had no previous knowledge that Mr. Sinnott, the contributor, had plans of donating the stock. The stock was valued at \$4.50 per share at the time of the donation for a total value of \$540. You state that the Committee "is unsure as to what to do with the stock." You inquire as to whether the donation to the Committee of stock in the CONMED corporation is permissible and how and where the donation of the stock and subsequent sale by the Committee should be reported. You also state that, if the Committee is advised that it cannot accept the stock, you wish to know how the stock should be returned and how the return should be reported.

The shares of stock owned by the contributor are the assets of the contributor. The Commission regulations specifically contemplate the donation of unliquidated stock at 11 CFR 104.13 wherein instructions are set out as to the reporting of such in-kind contributions. Therefore, the donation of stock owned by an individual in CONMED to the Committee is not prohibited by 2 U.S.C. 441b(a).

The contribution limitations of the Act apply to the donation of the shares since they are a thing of value in fact, the term "securities" is specifically included in the list of examples of goods and services that would constitute a contribution if donated. 11 CFR 100.7(a)(1)(iii)(A). The amount of such a contribution is equal to the value on the date it is received. 11 CFR 104.13(a)(1) and (b)(1). The acceptance of the stock, valued at \$540 at the time it was placed in the Committee's name, is permissible under 2 U.S.C. 441a(a)(1)(A).

Commission regulations provide that if the shares have not been liquidated at the close of a reporting period, the Committee shall record as a memo entry (not as cash) the fair market value of the shares on the date received. The Committee shall disclose Mr. Sinnott's full name and mailing address and, because the contribution is valued in excess of \$200, his occupation and the name of his employer. 11 CFR 104.13(b)(1). The contribution shall be reported on Schedule A but, as a memo entry, shall not be included in the total of contributions for the period. See Attachment A for an illustration of how this transaction may be reported.

When the stock is sold, the Committee shall report the proceeds on the next report due. If the stock is purchased directly from the Committee so that the purchaser is known, the Committee shall report the purchaser's name and address and, if the purchase price is in excess of \$200, the occupation and the name of the employer of the purchaser. Such a purchase shall be considered a contribution by the purchaser. The Committee shall also report the identification of the original contributor. 11 CFR 104.13(b)(2). The sale of the stock and the original donation shall be reported on Schedule A. The value of the purchase shall be reported as a normal contribution and the total shall be incorporated in the contribution total for the period. The value of the original donation shall be reported as a memo entry and shall not be incorporated into the total of contributions for the period. See Attachment B for an illustration of how these transactions may be reported.

If the Committee sells the stock through an established market mechanism whereby it does not know the identity of the purchaser, then the purchaser will not be purchasing the stock directly from the candidate or committee and, thus, will not be considered to be making a contribution to the committee. Accordingly, the Committee will not be required to report the identification of the purchaser. The Committee must still comply with the other reporting requirements of 11 CFR 104.13(b)(2) as to the amount of the proceeds from the sale and the identification of the original contributor. Because the purchase price is not considered a contribution from the purchaser in this situation, it should be incorporated in the total of "Other Receipts" for the reporting period. See Attachment C for an illustration of how these transactions should be reported.

Any expenses related to the sale of the stock, such as commissions, fees, postage, or insurance, should be reported as operating expenditures, and if such expenditures exceed \$200 to the same payee during the calendar year, they should be itemized. 11 CFR 104.3(b)(2)(i) and 104.3(b)(4)(i).

Because the Commission concludes that the acceptance of the stock is permissible, the Commission does not reach the question of how to return the stock to the contributor and how to report such a return.

The Commission expresses no opinion regarding any possible applications of other Federal laws or the tax ramifications of the described activity, since those issues 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.

Sincerely,

(signed)

Lee Ann Elliott
Vice Chairman for the Federal Election Commission

Attachments

SCHEDULE A

ITEMIZED RECEIPTS

MEMO

Use separate schedule(s) for each category of the Detailed Summary Page

PAGE OF FOR LINE NUMBER

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (in Full)

Friends of Sherwood Boehlert

A. Full Name, Mailing Address and ZIP Code Roger J. Sinnott Address Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Name of Employer Bank of Utica Occupation Bank President Aggregate Year-to-Date > \$ 540.00	Date (month, day, year) 4/7/89	Amount of Each Receipt this Period \$540.00 (in-kind) 120 shares of COMED, Inc. MEMO See below.
B. Full Name, Mailing Address and ZIP Code NOTE: This is a contribution of a noncash item that was not sold during the reporting period. Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Name of Employer Occupation Aggregate Year-to-Date > \$	Date (month, day, year)	Amount of Each Receipt this Period
C. Full Name, Mailing Address and ZIP Code Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Name of Employer Occupation Aggregate Year-to-Date > \$	Date (month, day, year)	Amount of Each Receipt this Period
D. Full Name, Mailing Address and ZIP Code Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Name of Employer Occupation Aggregate Year-to-Date > \$	Date (month, day, year)	Amount of Each Receipt this Period
E. Full Name, Mailing Address and ZIP Code Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Name of Employer Occupation Aggregate Year-to-Date > \$	Date (month, day, year)	Amount of Each Receipt this Period
F. Full Name, Mailing Address and ZIP Code Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Name of Employer Occupation Aggregate Year-to-Date > \$	Date (month, day, year)	Amount of Each Receipt this Period
G. Full Name, Mailing Address and ZIP Code Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Name of Employer Occupation Aggregate Year-to-Date > \$	Date (month, day, year)	Amount of Each Receipt this Period

SUBTOTAL of Receipts This Page (optional)

TOTAL This Period (last page this line number only)

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NAME OF COMMITTEE (in Full)

Friends of Sherwood Boehlert

<p>A. Full Name, Mailing Address and ZIP Code Peter Purchaser Address</p> <p>Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):</p>	<p>Name of Employer Name of Employer Occupation Occupation Aggregate Year-to-Date > \$ 600.00</p>	<p>Date (month, day, year) 6/15/89</p>	<p>Amount of Each Receipt this Period \$600.00 Purchase of 120 shares of CONMED, Inc. See next entry</p>
<p>B. Full Name, Mailing Address and ZIP Code Roger J. Sinnott Address</p> <p>Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):</p>	<p>Name of Employer Bank of Utica Occupation Bank President Aggregate Year-to-Date > \$ 540.00</p>	<p>Date (month, day, year) 4/7/89</p>	<p>Amount of Each Receipt this Period \$540.00 (in-kind Contrib. of 120 shares of CONMED, Inc. MEMO</p>
<p>C. Full Name, Mailing Address and ZIP Code</p> <p>Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):</p>	<p>Name of Employer Occupation Aggregate Year-to-Date > \$</p>	<p>Date (month, day, year)</p>	<p>Amount of Each Receipt this Period</p>
<p>D. Full Name, Mailing Address and ZIP Code</p> <p>Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):</p>	<p>Name of Employer Occupation Aggregate Year-to-Date > \$</p>	<p>Date (month, day, year)</p>	<p>Amount of Each Receipt this Period</p>
<p>E. Full Name, Mailing Address and ZIP Code</p> <p>Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):</p>	<p>Name of Employer Occupation Aggregate Year-to-Date > \$</p>	<p>Date (month, day, year)</p>	<p>Amount of Each Receipt this Period</p>
<p>F. Full Name, Mailing Address and ZIP Code</p> <p>Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):</p>	<p>Name of Employer Occupation Aggregate Year-to-Date > \$</p>	<p>Date (month, day, year)</p>	<p>Amount of Each Receipt this Period</p>
<p>G. Full Name, Mailing Address and ZIP Code</p> <p>Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):</p>	<p>Name of Employer Occupation Aggregate Year-to-Date > \$</p>	<p>Date (month, day, year)</p>	<p>Amount of Each Receipt this Period</p>

<p>SUBTOTAL of Receipts This Page (optional)</p>	<p>\$600.00</p>
<p>TOTAL This Period (last page this line number only)</p>	<p></p>

SCHEDULE A

ITEMIZED RECEIPTS

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NAME OF COMMITTEE (in Full)

Friends of Sherwood Boehlert

A. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Roger J. Sinnott Address	Bank of Utica	4/7/89	\$540.00 (in-kind Contribu. of 120 shares of CONMED, Inc.
Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Occupation Bank President	Aggregate Year-to-Date > \$ 540.00	MEMO. See next entry
B. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
NOTE: Above shares sold through M. Griffith, Inc. brokers. Purchaser unknown. Cash proceeds of \$600.00		6/15/89	\$600.00
Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Occupation	Aggregate Year-to-Date > \$ 600.00	
C. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Occupation	Aggregate Year-to-Date > \$	
D. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Pe.
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Occupation	Aggregate Year-to-Date > \$	
E. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Occupation	Aggregate Year-to-Date > \$	
F. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Occupation	Aggregate Year-to-Date > \$	
G. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Occupation	Aggregate Year-to-Date > \$	

SUBTOTAL of Receipts This Page (optional)

\$600.00

TOTAL This Period (last page this line number only)