

ADVISORY OPINION

AO 1975-1: NATIONAL POLITICAL PARTY CONVENTIONS

This advisory opinion is rendered under 2 U.S.C. 437f in response to requests (for advisory opinions) submitted by the Democratic National Committee and the Republican National committee (hereinafter the Committees) and published together as AOR 1975-1 in the June 24, 1975, Federal Register (40 FR 26660). Interested parties were given an opportunity to submit written comments relating to the requests.

The requests state that both committees are in the process of selecting sites for Presidential nominating conventions to be held in the summer of 1976. In connection with the conventions, private and public (municipal) corporations in some of the cities which are potential sites have offered to the National Committees for no charge or at reduced charges:

(1) The use of an auditorium or convention center, construction and convention related services therein such as: construction of podiums; press tables; false floors; camera platform; additional seating; lighting, electrical, air conditioning and loudspeaker systems; offices; office equipment; and decorations. Rent is to be waived during the construction period;

(2) Various transportation services, including the provision of buses and automobiles;

(3) Law enforcement services necessary to assure orderly conventions;

(4) Use of convention bureau personnel to provide central housing and reservation services;

(5) Rooms in hotels in proportion to the number of rooms actually booked by the conventions;

(6) Local transportation, accommodations and hospitality for committees of the Parties responsible for choosing the sites of the conventions; and

(7) Other similar convention related facilities and services.

In addition, various local and state governmental agencies have offered the use of municipal and state facilities or services in connection with the conventions for no charge or at reduced charges.

The Committees request an advisory opinion indicating:

(A) Whether these transactions would violate 18 U.S.C. Sec. 610, (B) whether they

must be treated as involving expenditures for the purposes of 26 U.S.C. Sec. 9008(d) and (C) the Commission's certification and disbursement procedures under 26 U.S.C. Sec. 9008(e) and (g).

A. Whether the transactions would violate 18 U.S.C. Sec. 610. Section 610.

Section 610, Title 18, United States Code, makes it unlawful for a corporation ". . . to make a contribution or expenditure in connection with any political convention or caucus held to select candidates for any political office . . .". As used in Section 610 ". . . the phrase 'contribution or expenditure' [includes] any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section . . .".* 2 U.S.C. Sec. 591(a)(2) defines the term "election," as used in Section 610, as including "a convention or caucus of a political party held to nominate a candidate."

The Commission interprets the applicability of Section 610 as follows:

1. State or local governmental agencies and municipal corporations. It is the opinion of the Commission that any of the services, benefits or uses of property described in paragraphs numbered (1) through (7) above may be offered by state or local governmental agencies and municipal corporations without violating 18 U.S.C. Sec. 610. Section 610 prohibits only national banks, corporations and labor organizations from making contributions or expenditures in connection with political conventions. Thus, local or state governmental agencies or municipal corporations would not be prohibited from providing facilities or services to the Committees, provided that such facilities were not leased from corporations, national banks or labor organizations for less than their fair market value. The Commission would view with grave concern any evidence that any

* The Commission notes that 18 U.S.C. 610 includes a definition for "contribution or expenditure" which is supplemental to the definitions in 18 U.S.C. 591. The relationship between the two definitions was addressed in Ash v. Cort, 496 F.2d 416, 424 (3rd Cir. 1974), rev'd on other grounds, 43 U.S.L.W. 4773 (1975).

"The definition given 'expenditure' in both sections traces back to the Federal Election Campaign Act of 1971. P.L. 92-225, Title II Secs. 201, 205 86 Stat. 3. The drafters clearly intended Sec. 591's definition to affect interpretation of Sec. 610, for they expressly provided that the definitions in Sec. 591 applied to use of those terms in Sec. 610. We note also that Sec. 591 indicates the 'meaning' of expenditure while Sec. 610 only indicates certain matters 'included' in that term. We therefore read Sec. 610 as supplementing rather than replacing Sec. 591's definition."

Furthermore, Section 101(f) (2) of the Federal Election Campaign Act Amendments of 1974, amended 18 U.S.C. 591 to make clear that the definitions therein could be modified in the substantive sections, to wit Section 610.

government or government instrumentality which makes such facilities available to a political committee, had received from any corporation, at a date proximate to the giving of such facilities, any substantial contribution of money, or the benefit of any ostensible business transaction which appears to have been out of the ordinary course of the corporation's business. Municipal corporations may not serve as conduits for contributions which a corporation may not make directly.

2. Private Corporations. It is the opinion of the Commission that, in general, private corporations are precluded by 18 U.S.C. Sec. 610 from donating or providing at less than fair market value any of the services, benefits or uses of property described in paragraphs (1) through (7) above. The Commission notes two situations, however, which in the Commission's opinion do not involve violations of Sec. 610.

(a) Where a corporation offers certain reductions in standard rates and/or gives to a national political convention the use of certain facilities without apparent charge, in return for the purchase by the convention of a certain minimum quantity of whatever product or service the corporation deals in, the rate reduction or offering of "free" facilities are not prohibited contributions under Sec. 610, but are rather details of an overall purchase transaction, if such reduction and/or facilities are offered in the ordinary course of business by the corporation to non-political conventions of corresponding size and duration. It is a widely known industry practice, for example, for hotels to offer reduced rates, some free rooms and free meeting space within the hotel in exchange for advance booking of large numbers of rooms. In the Commission's view, the rates, rooms and meeting spaces so provided do not, in general, involve prohibited contributions. The Commission may, of course, audit any hotel corporation's donations of space or reductions in rates in connection with the overall convention purchase of rooms to assure that such donations conform in kind and degree to those offered by such hotels in connection with any typical convention which purchases room space.

(b) Local corporations which are engaged at the retail level in the business of supplying consumer goods or services to the public may contribute funds to a local civic association, business league, chamber of commerce, real estate board or board of trade (1) not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual, and (2) a principal objective of which must be the the encouragement of that commerce which is necessarily entailed in the arrival of any major convention in the city where such local corporations are located. Such contributions must be made in the reasonable expectation of a commensurate commercial return during the life of the convention, as may be indicated by previous convention experience. In the view the Commission, a contribution so qualified has commercial characteristics sufficiently akin to the characteristics of a purchase transaction, as described above, as to fall outside the prohibition of Sec. 610. The Commission may, of course, conduct such investigations and audits as may be necessary to ensure that any such "contribution" in connection with a political convention conforms in degree to contributions made by the same corporation to such civic association or like organization in connection with other, non-political conventions of a similar size and duration.

In the Commission's opinion, no other corporate offering beyond those described in the foregoing two exceptions are permitted by 18 U.S.C. Sec. 610.

B. Whether the transactions involve expenditures under 26 U.S.C. Sec.9008(d).

26 U.S.C. Sec. 9008(d)(1) provides that the national committee of a major party may not make expenditures with respect to a presidential nominating convention, which in the aggregate exceed \$2 million. It is the view of the Commission that the transactions described under Part A of this opinion as falling outside of the scope of 18 U.S.C. Sec. 610 involve "expenditures," or "gratuities" which are not attributable to the \$2 million limitation under which the committees operate.

C. The Commission's certification and disbursement procedures under 26 U.S.C. Sec. 9008(e) and (g).

Certification and disbursement procedures are in the process of being established by the Commission and will be the subject of a subsequent publication. Consequently, no opinion is expressed in this area at this time.

This advisory opinion is issued on an interim basis only pending the promulgation by the Commission of rules and regulations of general applicability. Any interpretation or ruling contained herein is to be construed as limited to the facts of the specific advisory opinion requests and should not be relied on as having any precedential significance except as it related to those facts at the time of its issuance.

Date: 10 JUL 1975

(signed) _____
Thomas B. Curtis
Chairman, for the
Federal Election Commission