ADVISORY OPINION 1975-94

Payment by Candidate of Out-of-Pocket Costs of Services
Provided by Corporation

This advisory opinion is issued pursuant to 2 U.S.C. §437f in response to a request by Donald E. Knickrehm, Treasurer, Ken Pursley for Congress Committee. The request was published in the November 4, 1975, Federal Register (40 FR 51357), and interested parties were given an opportunity to submit written comments pertaining to the request. No comments were received.

The requesting party seeks an advisory opinion indicating:

1. Whether a corporation which owns a restaurant may legally allow a candidate to hold a cocktail party or dinner at the restaurant if the candidate pays the actual costs of such cocktail party or dinner;

2. Whether a corporation may legally lend to or provide for the use of candidates or their committees equipment such as typewriters, copying equipment and airplanes, where the candidate or committee pays only the cost of operating such equipment and whether such transactions would constitute contributions if made by persons other than corporations and;

3. Whether the performance of campaign work by an employee of a corporation during normal working hours would constitute a prohibited contribution by such corporation.

In response to the first question, the Commission's opinion is that a corporation which owns a restaurant may legally allow a candidate to hold a cocktail party or dinner at its restaurant but could provide the restaurant facilities and food and beverages therein only at normal comparable charges. However, under 18 U.S.C. §591(e)(5) discounts from the charges for food and beverages not exceeding a cumulative value of $500 per candidate per election may be given so long as the food and beverage are provided at a charge at least equal to cost. The Commission would regard as cost the normal comparable charge for the food and beverage less the vendor's profit. Since 18 U.S.C. §610 generally prohibits corporations from making contributions, the restaurant may give the described discounts only to the extent of a cumulative value of $500 for each election and each candidate to whom the food and beverages are sold. The candidate must report all payments for food and beverages under 2 U.S.C. §434.

With regard to the second question raised in the request, the Commission would advise that the provision to the candidate of the use of equipment such as typewriters, copying equipment and airplanes, at cost would constitute an in-kind contribution. The term "contribution" is defined in 2 U.S.C. §431(e)(1) and 18 U.S.C. §591(e)(1) as

". . . a gift, subscription, loan, advance, or deposit of money or, anything of value . . ." (emphasis added). Since the equipment described in the request clearly has value over and above the cost of operating such equipment, the Commission would regard the use of such equipment as a contribution, unless the supplier is reimbursed for the normal and usual charge. In its proposed regulation on disclosure, adopted on November 25, 1975, the Commission stated that:

> The usual and normal charge of any good shall be the retail price of that good in the market from which it ordinarily would have been purchased at the time of its contribution.
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> The usual and normal charge of any services, other than those provided by an unpaid volunteer, shall be the prevailing hourly or piecework rate charged for such services prevailing at the time such services were rendered.

Thus, for example, the Commission would regard the provision of a typewriter to a candidate at cost as an in-kind contribution (subject to limit under 18 U.S.C. §608) in the amount of the difference between the cost of operating the typewriter and normal and usual charge for the rental of such typewriter. Corporations are prohibited by 18 U.S.C. §610 from making such contributions.

As to the third question, the payment of the salary or other compensation for services to a candidate's campaign by any person other than the candidate is a contribution under 2 U.S.C. §431(e)(4) and 18 U.S.C. §591(e)(4). Thus, the payment of compensation for this purpose by a corporation is also prohibited by 18 U.S.C. §610. However, the Commission also concluded in its proposed regulation on disclosure that:

> No compensation is paid:
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> (i) to an employee who:
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> (A) is paid on an hourly or salaried basis;
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> (B) is expected to perform duties for an employer for a particular number of hours per period; and
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> (C) engages in political activity during what would otherwise be a regular work period;
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> if the taken or released time is made up or completed by that employee within a reasonable period.
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> (ii) To an employee who is paid on a commission or piecework basis, or is paid only for work actually performed, whose time is considered the employee's own to use as he or she sees fit and who

engages in political activity during what would otherwise be normal working hours.

(iii) Where the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time. Under these conditions and if such services are provided on a voluntary basis, there would be no contribution under 18 U.S.C. §610. Further, since the definitions in 2 U.S.C. §431 and 18 U.S.C. §591 are in this instance parallel, there would be no contribution for the purpose of the 18 U.S.C. §608(b) limitations.

This advisory opinion is issued on an interim basis only pending promulgation by the Commission of rules and regulations or policy statements of general applicability.