

August 10, 1976

Re: AOR 1976-21

Kenneth Ziffren, Esquire
Ziffren & Ziffren
10889 Wilshire Boulevard
Los Angeles, CA 90024

Dear Mr. Ziffren:

This refers to your advisory opinion request of May 18, 1976, submitted on behalf of the Brown for President Committee (the Committee”), the principal campaign committee supporting Governor Edmund G. Brown, Jr.

The Committee contemplates using rock music concerts to raise funds in support of Governor Brown’s presidential campaign. Specifically, the Committee poses three questions:

1. The first question asks whether the gross purchase price of the tickets, paid by the contributor (provided the purchaser does not contribute in excess of \$250 in the primary election) will be matchable?

In response to the first question, the Commission in §130.8 of its proposed regulations has defined matchable campaign contribution to mean “a gift of money made by a written instrument identifying the individual making the contribution by full name, and mailing address and made for the purpose of influencing the result of a primary election.”

However, §130.9(i)(1) (Nonmatchable Contributions) states that:

Contributions in the form of the purchase price for the admission to any activity that primarily confers private benefits in the form of entertainment to the contributor, such as a concert, motion picture or theatrical performance, in which case the amount of the matchable contribution shall include only the excess of the amount paid for admission over the fair market value of all the benefits available to the purchaser of the ticket, using a good faith reasonable estimate. The fair market value and any amount in excess of the fair market value of the benefits conferred shall be clearly and separately indicated on the promotional material and the tickets for the event, and a copy of such material and of a ticket shall accompany the submission of documentation under 131.2 and 132.2.

In addition, §130.8(a)(2) states that “the amount of the contribution which is submitted for matching shall be actually received (emphasis added) by the candidate of any of the candidate’s authorized committees and deposited in a designated campaign depository.” Consequently, it is incumbent upon the Committee to receive the contributions itself and to subsequently disburse per ticket commissions owed to retail outlets or to ticket agents.

2. Your second question concerns cash contributions for which you seek matching funds. Section 130.9 of the Commission’s proposed regulations states that “A contribution to a candidate other than by a gift of money under §130.8 is not matchable. Contributions which are not matchable include: * * * (k) a gift of cash”.

The contributions which you describe in your letter fall within this prohibition and are thus not matchable under Internal Revenue Code, §9034.

3. Question three concerns qualified campaign expenses. Section 130.10 of the proposed regulations defines “qualified campaign expense” to mean “a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—(a) incurred by a candidate or by the candidate’s authorized committees, in connection with his or her campaign for nomination for election and (b) neither the occurrence, nor payment of which, constitutes a violation of any law of the U.S. or of any State in which the expense is incurred or paid, except that any State law which has been preempted by the FECA of 1971, as amended, shall not be considered a State law for purposes of this subsection.” The costs of holding the concerts are qualified campaign expenses.

Inasmuch as your request relates to events that occurred either before or just after reconstitution of the Commission the conclusions stated in 1 and 2 above will apply only with respect to events occurring after July 20, 1976 (the date of the Commission’s preliminary approval of the cited proposed regulations), and the submissions for matching funds related to such events.

This response relates to your opinion request but may be regarded as informational only and not as an advisory opinion since it is based in part on proposed regulations of the Commission which must be submitted to Congress. The proposed regulations may be prescribed in final form by the Commission only if not disapproved either by the House or the Senate within thirty legislative days from the date received by

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them. 2 U.S.C. §438(c). The proposed regulations were submitted to Congress on August 3, 1976.

Sincerely yours,

(signed)

Vernon W. Thomson
Chairman for the
Federal Election Commission