



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 21, 1976

Re: AOR 1976-93

Mr. George M. Minor
Administrative Assistant
to Honorable Parren J. Mitchell
House of Representatives
Washington, D.C. 20515

Dear Mr. Minor:

This is in response to your request, dated September 29, 1976, for an opinion of the Commission regarding two aspects of Mr. Mitchell's 1976 campaign.

In the first, Mr. Mitchell has approximately 150 king-size posters leftover from his 1974 campaign. He plans to distribute these posters, after modifying them by affixing Carter/Mondale and Sarbanes bumper stickers. You informed Mr. Swillinger of the General Counsel's office in a telephone conversation that Mr. Sarbanes is supplying his own bumper stickers. We presume that obtaining the Carter/Mondale stickers will not require an expenditure by Mr. Mitchell's campaign.

It is the opinion of the Commission that Mr. Mitchell may undertake the activity as described regarding the posters. Since the posters do not involve the making of an expenditure by the Mitchell campaign, no reporting is required as to this activity.

Your second question concerns several newspaper ads for Mr. Mitchell's own re-election effort. Mr. Mitchell wishes to include in these ads photographs of candidates Carter, Mondale, and Sarbanes. You indicated in the telephone conversation with Mr. Swillinger that the total cost of the ads would be approximately \$2,400. You point out in your letter that the ads would cost no more with the additional photographs as they would with only Mr. Mitchell's photograph.

It is clear that Mr. Mitchell's campaign cannot pay the entire cost for the described advertisements, since a portion of such a payment would be necessarily regarded as an in-kind contribution to the Carter/Mondale ticket, see Part 106 of the Commission's proposed regulations (copy enclosed), and as such would be impermissible under the public financing provisions of Title 26, United States Code, prohibiting a publicly

financed presidential candidate from receiving private contributions. Of course, the Carter/Mondale campaign could itself pay for a reasonably allocated share of the costs of this advertising, which in this case would appear to be approximately \$800, or one-third of the \$2,400 cost. There are as well other ways in which the Carter/Mondale share may be paid. The national party committee have special expenditure rights with respect to the presidential candidates, see 2 U.S.C. §441a(d)(2). Moreover, each established State, county, city, or congressional district committee of a political party is recognized by §110.7(b)(5) of the Commission's proposed regulations as having a right to spend up to \$1,000 to advance the candidacies of the party's presidential and vice-presidential nominees. In this connection, I enclose a copy of the Commission's letter to Douglas Huron, Counsel to the Carter Campaign, in which, inter alia, such spending activity is described. If you wish to propose a specific expenditure arrangement involving these various entities, we will, of course, be prepared to confirm whether or not it conforms to the requirements of the Act and the proposed regulations.

With regard to Mr. Sarbanes' appearance in these advertisements, he may pay his allocable share of the costs, or that share could be treated as a contribution in-kind by the Mitchell campaign to the Sarbanes campaign. In other words, given the total advertising cost you project, Mr. Mitchell could pay his own \$800 allocable share and also that of Mr. Sarbanes, for a total of \$1,600 (assuming that this \$800 in-kind contribution to Mr. Sarbanes by Mr. Mitchell would not take Mr. Mitchell over the \$1,000 contribution limit) or Mr. Sarbanes could reimburse the Mitchell campaign in the amount of \$800. A State party committee, of course, could pick up Mr. Sarbanes' share as a State party committee expenditure under §110.7(b) of the proposed regulations and 2 U.S.C. §441a(d)(3).

This response relates to your opinion request, but should be regarded as informational only and not as an advisory opinion since it is based in part on regulations adopted by the Commission but not yet having the full force and effect of law. These proposed regulations were formally adopted by the Commission and serve as interpretative rules with regard to the meaning of pertinent statutory provisions. They were transmitted to the Congress on August 3, 1976, see 2 U.S.C. §438(c). For your information, I enclose a copy of a recent Commission policy statement regarding the rules.

Sincerely yours,

(signed)
Vernon W. Thomson
Chairman for the
Federal Election Commission

AOR 1976-93

Page 3

Enclosures [8/25/76 FR reprint, 10/5/76 policy statement, and
response to O/R #715]