



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 4, 1977

AO 1977-45

Franklin S. Adler
Attorney at Law
Century City North Building
10100 Santa Monica Boulevard
Suite 2600
Los Angeles, California 90067

Dear Mr. Adler:

This refers to your letter of September 16, 1977, requesting an advisory opinion on behalf of Mr. Terry Martin, a candidate for the House of Representatives, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use of credit, which will be accumulated for services he renders to an advertising publication, for the purchase of campaign advertising space in the publication.

Your letter states that Mr. Martin, an experienced communication and media professional, intends to render personal services to a tabloid advertising newspaper containing some news and editorial material. His precise role will be to write editorials and solicit advertising for the publication. It is proposed that, instead of money, Mr. Martin receive credit from the publication in exchange for his services. The amount of the credit would be based upon the fair market value of the work he performs as measured against the compensation payable to others for similar work. You state that after "officially announcing" his Federal candidacy, Mr. Martin will terminate his work for the newspaper "but will buy advertising space in the publication at the going rate for whatever space he desires."¹ The publisher will charge the accumulated credit balances "reflecting the value of the work previously performed in the same amount as the cost of the advertising space." You explain that the entire credit account will be consumed in this manner without any funds changing hands.

You ask specifically whether this arrangement violates any of the provisions of the Act and whether the publisher is regarded as making a contribution to the candidate for purposes of the contribution limits in 2 U.S.C. 441a. You also ask whether the described arrangement, if permissible, must be reflected on the accounts and reports required to be filed in connection with Mr. Martin's campaign.

¹ The Commission notes that, for purposes of the Act, candidate status is not dependent on an official announcement of candidacy.

The Commission concludes that the arrangement is permissible under the Act provided the credits accumulated as a result of Mr. Martin's professional services for the newspaper (1) result from bona fide employment, and (2) do not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time. This arrangement would be subject to the reporting requirements of the Act, since it, in effect, involves a use of Mr. Martin's personal assets for campaign purposes.

The Commission has recognized that an individual may pursue gainful employment at the same time he or she is a candidate for Federal office. See Advisory Opinions 1977-31, 1976-70 and the Commission's response to AOR 1976-84. Furthermore, under 110.10 of the Commission's regulations a candidate for the House of Representatives may make unlimited expenditures from personal funds. For purposes of 110.10 personal funds include "salary and other earned income from bona fide employment." The credit accumulated by Mr. Martin as a result of his services for the newspaper represents a form of earned income. Thus, so long as the employment is bona fide, the credit may be regarded as personal funds and used for campaign purposes. Bona fide employment is present if the credit received by Mr. Martin does not exceed the amount of monetary compensation which would be paid to any other similarly qualified person for the same work over the same period of time. If these conditions are satisfied the publisher would not be regarded as making an in-kind contribution to Mr. Martin.

The reporting requirements of the Act would apply in these circumstances since they clearly involve the making of an expenditure (as defined in 2 U.S.C. 431(f)) by the candidate from "personal funds." However, neither Mr. Martin nor his principal campaign committee, has any reporting obligations with respect to the line of credit until it is actually used for campaign purposes. Whenever advertising space in the publication is purchased by the campaign, Mr. Martin's principal campaign committee² should report as an expenditure the amount of credit so consumed. Simultaneously, his principal campaign committee should report, as an in-kind contribution from the candidate, an amount equal to the expenditure made during the reporting period. See 104.3(a) of the regulations. Schedule A should be used to itemize the in-kind contribution and Schedule B for the corresponding expenditure, see pages 18, 19 of the Commission's bookkeeping manual. The campaign committee should maintain a current record of the unused credit available to the candidate so that expenditures to the publisher will not exceed the aggregate amount of the credit "paid" to the candidate as compensation.

The Commission expresses no opinion regarding the Federal income tax consequences of this transaction since those issues are within the jurisdiction of the Internal Revenue Service rather than the Commission.

² Mr. Martin's statement of candidacy filed June 27, 1977, indicates that his principal campaign committee will receive and disburse all campaign funds pursuant to 101.3 of the regulations.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)
Thomas E. Harris
Chairman for the
Federal Election Commission

Enclosures