



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 31, 1978

AO 1978-20

Honorable Robert W. Davis
P.O. Box 189
Gaylord, Michigan 49735

Dear Senator Davis:

This responds to your letter of March 14, 1978, requesting an advisory opinion on the applicability of the Federal Election Campaign Act of 1971, as amended, ("the Act"), and Commission regulation 11 CFR 114.9(e) to the use of aircraft owned by a nonprofit corporation.

Specifically, you ask whether a flying club, organized as a non-profit corporation, is prohibited from making an in-kind contribution of the use of its aircraft in a Congressional campaign. The Commission concludes that its regulation at 11 CFR 114.9(e) applies to a non-profit corporation and requires advance reimbursement to the corporation for use of its airplane in a Congressional campaign.

The 1976 Amendments of the Act made clear that all corporations are subject to the prohibitions of 2 U.S.C. 441b regarding contributions or expenditures even if the corporation is a membership organization, cooperative or other corporation without capital stock. See Advisory Opinion 1977-32, copy enclosed. These types of corporate entities fall within the general prohibition language of 441b(a) which applies to "any corporation whatever." That prohibition on corporate contributions is reiterated in the Commission regulation 114.2(b) where "any corporation whatever is prohibited from making a contribution or expenditure as defined in 114.1(a) in connection with any Federal election." Under 114.1 a gift of services or anything of value is considered a "contribution", but any activity specifically permitted in Part 114 would not be a contribution.

Section 114.9 permits certain uses of corporate facilities and specifically provides in 114.9(e) that the use of an airplane owned or leased by a corporation (other than one licensed to offer commercial services) for travel by or on behalf of a candidate in connection with a Federal election requires advance reimbursement to the corporation. The amount of reimbursement is either the first class air fare or usual charter rate depending on where the travel occurs. Although the corporation may not make an in kind contribution of the use of its airplane, the permitted use of corporate facilities for individual volunteer activity by stockholders and employees under

114.9 provides a basis for an individual member of the incorporated flying club to use the club's aircraft for campaign travel as a volunteer providing personal services to the campaign. However, the member or the campaign committee must make payment to the club in accord with 114.9(e). Payment by the member for campaign use of the club's aircraft would be within the contribution exception found in 2 U.S.C. 431(e)(5)(D) subject to a \$500 per election ceiling. See 431(e)(5)(I). Any amount above \$500 would be treated as an in kind contribution to the candidate by the member subject to the contribution limits of 2 U.S.C. 441a(a)(1)(A) and would also be subject to disclosure under 2 U.S.C. 434. See also 104.3 of Commission regulations.

Thus, if a member of the club wishes, he or she may use the club's airplane to transport campaign personnel as long as an advance reimbursement (payment) to the corporation is made at the first class air fare or the usual charter rate, as required by Commission regulation 114.9(e), and provided that any such payment made by the club member is within the combined limitations of 2 U.S.C. 431(e)(5)(I) and 441a.

The Commission notes the possible application of other Federal laws and regulations outside its jurisdiction, particularly regulations of the Federal Aviation Administration. The Commission further notes that its regulation at 114.9(e) is not intended to supercede Federal Aviation Act 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)

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosure