



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 31, 1978

AO 1978-45

Honorable E. Thomas Coleman
House of Representatives
Washington, D.C. 20515

Dear Mr. Coleman:

This responds to your letter of July 10, 1978, with attachment, requesting an advisory opinion concerning the applicability of the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), to an offer for billboard advertising space.

Your letter states that Russell Baltis, the Executive Vice President of the North Kansas City Development Company ("the Company"), has made available to your principal campaign committee, Citizens for Coleman ("Citizens"), a billboard owned by the Company, Mr. Baltis has offered to rent the billboard to Citizens at a rate of \$100 per month. You note that this amount appears below the commercial rate for similar spacer but add that Mr. Baltis has made a practice of providing reduced rates for civic and political purposes. You ask whether this offer would be acceptable under the Act and Commission regulations.

Section 114.9(d) of the Commission's regulations permits the use of corporate facilities, such as the Company's billboard, for activity in connection with a Federal election as long as the corporation is reimbursed "within a commercially reasonable time in the amount of the normal and usual rental charge, as defined in 100.4(a)(1)(iii)(B), for the use of the facilities." The regulations define the term "usual and normal charge," in the case of goods, as "the price of those goods in the market from which they ordinarily would have been purchased at the time of their contribution." 11 CFR 100.4 (a)(1)(iii)(B)(1).

The Commission views a discount below the "usual and normal charge" to be a contribution if the discount is not routinely offered in the vendor's ordinary course of business to nonpolitical clients.¹ See the Commission's response to Advisory Opinion Request 1976-30,

¹ The Courts and other Federal agencies have generally viewed "discounts" as reduced prices offered to purchasers of goods and services that are "[B]ased on actual bona fide differences in costs of sales resulting from differing methods or quantities in which such commodities are sold or delivered." *Thomasville Chair Company v. FTC*, (5th Cir, 1952), 306 F2d 541, 545; Clayton Act, §2(a,c) as amended by Robinson-Patman Price Discrimination Act, 15 U.S.C. 13(a,c).

copy enclosed. Since the Company does not, in the ordinary course of its business, offer the \$100 per month rate to commercial advertisers, the Commission would view the net difference between the two rates as an in-kind contribution from the Company to Citizens. The Act prohibits corporate contributions of any kind in connection with Federal elections. 2 U.S.C. 441b.

This response constitutes an advisory opinion concerning 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