FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 28, 1978

AO 1978-49

Honorable Ted Risenhoover
House of Representatives
Washington, D.C. 20515

Dear Mr. Risenhoover:

We have your letter of June 22, 1978, with enclosures, requesting an advisory opinion from the Commission concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to your committee with regard to an "in kind contribution" by the Dirty Dozen Campaign Committee.

Specifically, you state that the Dirty Dozen Campaign Committee placed an advertisement in the June issue of Environmental Action magazine which was "a paid political advertisement of Environmental Action's Dirty Dozen Campaign Committee." You also state that you were not asked whether you wanted the "good publicity" provided by the advertisement. You seek the Commission's guidance in reporting this type of "contribution" and in determining your share of the cost of this advertisement. Further, you ask the Commission's opinion as to who would be in violation of the Act should the contribution limits in 2 U.S.C. 441a be exceeded.

The Act and Commission regulations contemplate the making of independent expenditures by political Committees. See 2 U.S.C. 431(p), 434(b)(13). Section 431(p) defines an "independent expenditure" as:

> an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate or any authorized committee or agent of such candidate and which is not made in concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate.

An expenditure which qualifies as an "independent expenditure" does not result in a contribution (in kind or otherwise) to any candidate for Federal office and would not have to be reported by any candidate named in connection with the expenditure. Furthermore, an

"independent expenditure" would not be subject to contribution limits as a contribution to any candidate. See 2 U.S.C. 441a(a)(7) and 109.1(c) of Commission regulations.

If, as you have stated, the expenditure by Environmental Action's Dirty Dozen Campaign Committee was made without "cooperation or consultation" with you, your authorized committee or an authorized agent, it is the Commission's opinion that, as to your campaign, the expenditure would qualify as an "independent expenditure" under 2 U.S.C. 431(p). Thus, your campaign committee would not be required to report the expenditure in any manner. Nor would the expenditure be subject to contribution limits as a contribution to your campaign. The Commission expresses no opinion regarding the manner in which the described expenditures were reported by the Dirty Dozen Campaign Committee.

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