



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 17, 1978

AO 1978-72

Max Carasso
Republican - Conservative Candidate for Congress
44 Court Street, Room 311A
Brooklyn, New York 11201

Dear Mr. Carasso:

This responds to your letter of September 2, 1978 requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to the receipt of money from sales of printed matter.

Your letter states that you, the candidate, want to prepare, print, advertise and mail in pamphlet or leaflet form at your own expense, materials previously written by you (in 1956-61 and 1969) which reflect your ideas; you would charge a specific price (\$2-\$5) for each pamphlet.¹ Specifically, you ask if the "expenses and proceeds, actually and strictly attributable to such sales," could be treated as business income and expense and so reported on your 1978 income tax. You say you would also report the results in a "memo" to the Clerk of the House.

According to your letter, your purpose is to "disseminate your rather unusual ideas" and you want to use your candidacy for Federal office as a platform for that dissemination. Since the advertising would be primarily on a national basis you feel that very little of the proceeds or political effect would be applicable to your local campaign. However, you do feel that your ideas may attract contributions over the advertised price of the material. In that event you would treat as a "contribution," and turn over to your principal campaign committee any money received in excess of the advertised price, whether received with the order or later elicited by the material itself.

It is the opinion of the Commission that the money received as consideration (the stated price of \$2-\$5) for the pamphlet comprised of your articles is earned business income to be treated as personal funds under §110.10(b)(2) provided that the price you charge (\$2-\$5) is a reasonable reflection of your costs and profit and is the same as you would charge were you not a

¹ The Commission assumes for purposes of this opinion that the printed matter which you refer to is limited to the 5 publications identified on the listing enclosed with your request and your 1969 comment in Religious Humanism, also included with your request.

candidate. See analogous situation in Advisory Opinion 1977-45. Similarly, the expenses incurred by you to produce this income are not "expenditures" under the Act.

However, if either the advertising for your pamphlet or the pamphlet or articles themselves include solicitations for your campaign or any express advocacy of your election or the defeat of any clearly identified candidate,² the money received is a reportable contribution and the expenses for the ads or pamphlet would be reportable expenditures under the Act. 2 U.S.C. 434(b); see also 104.2(b) of Commission regulations.

The Commission expresses no views concerning the Federal income tax aspects of your request since those issues are within the purview of the Internal Revenue Service.

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

Enclosures

² Section 441d (of Title 2 United States Code) requires that pamphlet advertisements sent via a "direct mailing" which expressly advocate your election or the defeat of another candidate, must include a statement that the communication is authorized by you or your campaign committee. See the enclosed FEC Notice 1976-55.