



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 5, 1979

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-18

Ms. Kelly Davall  
Mr. Kurt Burkhart  
5403 Midship Court  
Burke, Virginia 22015

Dear Ms. Davall and Mr. Burkhart:

This responds to your letter of April 24, 1979, requesting an advisory opinion on behalf of the Federal Election Commission's Former Employees Committee ("FEC-FEC"), a registered political committee, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the selling by FEC-FEC of its list of contributors.

According to your request, FEC-FEC is "quickly gathering a large list of contributors to the committee."<sup>1</sup> You state that in order to generate a larger cash flow FEC-FEC intends to make its contributor list available to purchasers of such lists. All contributors will be asked in advance if they would be willing to have their names included on such a list to be sold and the names of those who refuse will not be so included. You ask six specific questions with regard to this activity:

1. Were an individual to purchase our list, would his/her payment constitute a contribution to the committee?
2. Were a corporation and/or union to purchase our list, would its payment constitute a contribution to the committee?

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<sup>1</sup> As you know, 2 U.S.C. 438(a)(4) and 11 CFR 104.13 prohibit the use of information copied from reports and statements required to be filed with the Commission for the purpose of soliciting contributions or for any commercial purpose. The Commission has previously concluded that a political committee's sale of its own contributor list does not fall within the purview of that prohibition. However, it does prohibit the use of any list to solicit contributions which is copied or otherwise obtained from disclosure reports filed under the Act. See Advisory Opinion 1979-3, copy enclosed.

3. Were a candidate and/or committee registered with the Federal Election Commission to purchase our list, would his/her/its payment constitute a contribution to the committee?
4. Were a committee not registered with the Federal Election Commission to purchase our list, would its payment constitute a contribution to the committee?
5. Were the payment by any of these entities to be viewed as contributions, to what extent would they be so viewed? That is, would any differentiation be made regarding payments which represented the fair market price for the list and payments which represented an amount in excess of the fair market price? If so, how would one determine the fair market price?
6. On what line of the FEC Form 3 should these payments be reported? Is it necessary to indicate in the reporting of these receipts that the receipts are payments made for the purchase of the list?

Your first five questions go to the issue of whether the selling of FEC-FEC's contributor list would result in a contribution and, therefore, will be answered together. Question 6 will be addressed separately.

Section 100.4(a)(1)(iii)(A) of the Commission's regulations regards a "membership list commonly offered or used commercially" to be "a thing of value" which may, in certain circumstances, constitute a contribution under the Act. A thing of value which is provided to a candidate or political committee without charge, or at a charge which is below the usual and normal charge for such an item, constitutes a contribution to the extent of the difference between the usual and normal charge for the item at the time it is given and the amount charged the candidate or political committee. "Usual and normal charge" is defined as the price of goods or services in the market from which they ordinarily would have been purchased at the time of their contribution. 100.4(a)(1)(iii)(B).

In the situation presented by your request, the Commission would view FEC-FEC's contributor list as analogous to a "membership list commonly offered or used commercially". The sale of the list could involve the receipt of a contribution by FEC-FEC from a purchaser of the list if the purchase price exceeded the usual and normal charge for such a list in the market from which it would ordinarily be purchased. Conversely, the Commission notes that the sale of the list to a candidate or another political committee could involve the making of a contribution by FEC-FEC to the purchaser if the purchase price is less than the usual and normal charge for such a list in the market from which it would ordinarily be purchased. In either case, the amount of any resulting contribution would be the difference between the usual and normal charge at the

time of sale for a list of potential contributors in the appropriate market and the amount actually paid for the list.<sup>2</sup>

In response to Question 6, if the sale of FEC-FEC's contributor list results in a contribution being made to or by FEC-FEC, as described above, such contribution would be reportable pursuant to 2 U.S.C. 434 and 11 CFR 104.2 on either line 14, as a contribution from an individual, line 15, as a transfer from another political committee, or line 22, as a transfer to another political committee, of FEC Form 3. If, on the other hand, payments from the sale of the list resulted from an arm's length business transaction in which the usual and normal charge was paid for the list, that income would be reportable as "other income" on line 16 of FEC Form 3, with appropriate itemization and explanation of the receipt on Schedule A.

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 a specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Robert O. Tiernan  
Chairman for the  
Federal Election Commission

Enclosure

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<sup>2</sup> As you know, 2 U.S.C. 438(a)(4) and 11 CFR 104.13 prohibit the use of information copied from reports and statements required to be filed with the Commission for the purpose of soliciting contributions or for any commercial purpose. The Commission has previously concluded that a political committee's sale of its own contributor list does not fall within the purview of that prohibition. However, it does prohibit the use of any list to solicit contributions which is copied or otherwise obtained from disclosure reports filed under the Act. See Advisory Opinion 1979-3, copy enclosed.