



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 27, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-36

Mr. Wright H. Andrews
Sutherland, Asbill & Brennan
1666 K Street, N.W., Suite 800
Washington, D.C. 20006

Dear Mr. Andrews:

This responds to your letter with attachment of June 25, 1979, requesting an advisory opinion on behalf of the Committee for Fauntroy ("Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to certain aspects of a proposed agreement between the Committee and a fundraising organization regarding a direct mail fundraising campaign.

According to your letter and attached proposed agreement the Committee desires to enter into an agreement with Working Names, Inc. ("Working Names"), a direct mail fundraising and marketing organization, to use direct mail fundraising campaign using a portion of the solicited funds to meet its operating expenses. The proposed method is that all funds received will be deposited in the Committee's regular account. Three quarters of that money will be designated for return to Working Names to cover costs of developing and operating the direct mail program. The remaining quarter of the funds will be available for Committee use. Working Names will incur initial expenses in preparing and mailing the earliest fundraising materials. It will then bill the Committee for those amounts plus its fee. In turn, the Committee will use the designated funds to pay Working Names on a monthly basis.

According to the agreement, the cost to the Committee will be the actual expense of preparing the direct mail package plus profit to Working Names in the form of fees amounting to a set percentage (approximately one-fifth) of the total expenses. The agreement does provide that, irrespective of the actual total amount of fees and expenses, the Committee shall only be required to pay a maximum of 3/4 of the total amount of contributions received during the period of the Agreement as a result of Working Names direct mail activities. There is a provision, however, which, should Working Names determine during the initial testing period that the program is less successful than anticipated, provides for all funds raised by the direct mail

campaign to be available to Working Names, and none would be available to the Committee until Working Names costs and fees were paid.

In your letter you describe this financing arrangement as an ordinary business practice within the direct mail industry. You also submit an affidavit of a direct mail consultant with Working Names which states that within the direct mail industry the proposed type of financing agreement represents an ordinary mode of operation. You then ask whether the amounts which are expended by Working Names and are subject to reimbursement to develop and operate the direct mail fundraising campaign for the Committee are campaign contributions.

Corporations are prohibited from making contributions or expenditures in connection with any Federal election. See 2 U.S.C. 441b and Part 114 of the Commission's regulations. Contribution is defined to include the extension of credit for a length of time beyond normal business or trade practice. See 11 CFR 100.4(a)(6). Moreover, according to 114.10(a) of the Commission's regulations, a corporation may extend credit to a political committee only if that credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors which are of similar risk and size of obligation.

Contribution is also defined to include, among other things, "anything of value." The term "anything of value" includes services provided at less than the usual and normal charge, that is, less than the hourly or piecework rate charge for the services prevailing at the time the services are rendered. 11 CFR 100.4(a)(1)(iii)(B).

The Commission concludes that if, in fact, (1) the proposed financial agreement with its provisions for expenses to be initially incurred by Working Names, and for limited liability on behalf of the Committee if the direct mail is "unsuccessful," is of a type which is normal industry practice and contains the type of credit which is extended in the ordinary course of Working Names' business with terms which are substantially similar to those given to nonpolitical, as well as political, debtors of similar risk and size of obligation, and if (2) the costs charged the Committee for services are at least the normal charge for services of that type, then the amounts expended by Working Names will not be considered to be campaign contributions. If, however, any of these provisions deviate from Working Names' normal course of doing business, then a

prohibited contribution could result. See Advisory Opinion 1976-86 and the Commission's response to Advisory Opinion Request 1976-56, copies enclosed.

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)

Robert O. Tiernan
Chairman for the
Federal Election Commission

Enclosures