FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 8, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-52

Jeffrey M. Koopersmith
16 N. Franklin Street
Doylestown, Pennsylvania 18901

Dear Mr. Koopersmith:

This responds to your letter of August 27, 1979, on behalf of the Committee to Elect Ed Howard requesting an advisory opinion on the applicability of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use of an aircraft owned by Mr. Howard's corporation for campaign travel.

You state that Mr. Howard is a candidate for the United States Senate and is also a pilot. When possible, he flies privately for business purposes using an aircraft owned by a management company which is solely owned by Mr. Howard. The management company is a corporation chartered under the laws of the Commonwealth of Pennsylvania. You note that a charter rate for lease of an aircraft depends on whether the aircraft is chartered with or without fuel and with or without a pilot. You ask:

1) Whether Mr. Howard's use of the aircraft for campaign travel is subject to the requirements of Commission regulations at 11 CFR 114.9(e) in light of the fact that he is sole owner of the corporation having title to the aircraft.

2) If Mr. Howard is subject to the requirements of 114.9(e), what is meant by the "usual charter rate" for lease of an aircraft in light of the leasing arrangements described above?

3) If the corporation which owns the aircraft is dissolved and made a sole proprietorship, would the requirements of 114.9(e) continue to apply?

Part 114.9(e) of the Commission's regulations requires a candidate, or the candidate's agent, who uses an airplane owned by a corporation (other than a licensed commercial air

carrier) to reimburse the corporation, in advance, for campaign use of the airplane at the normal and usual charge (i.e. the charter rate) for an aircraft of the same class and type. Section 114.9(e) of Commission regulations does not distinguish between corporations whose stock is held by many persons and those corporations where a candidate is the sole stockholder of the corporation. Accordingly, the Commission concludes that the campaign use of an aircraft owned by Mr. Howard's corporation is subject to 114.9(e) of Commission regulations.

Because Mr. Howard would be flying the aircraft himself, the charter rate for an aircraft of the same class and type with fuel and without a pilot should be used in determining the "usual and normal charge". The costs of reimbursing the corporation for use of the aircraft should be reported in accordance with 104.2 of Commission regulations.

In answer to your third question, regulation 114.9(e) is only applicable to use of an aircraft (not licensed for commercial services) owned or leased by a corporation or labor organization. It would not apply to an aircraft owned by a sole proprietorship, but careful records concerning the campaign use of such aircraft must be maintained for verification purposes.

The Commission notes the possible application of other Federal laws and regulations outside its jurisdiction, particularly regulations of the Federal Aviation Administration. The Commission further notes that its regulation at 114.9(e) is not intended to supercede Federal Aviation Act regulations.

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