



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 22, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-76

Mr. Richard B. Dingman
Treasurer
RSC Campaign Fund
P.O. Box 448
Vienna, Virginia 22180

Dear Mr. Dingman:

This responds to your letter of December 4, 1979, requesting an advisory opinion on behalf of the RSC Campaign Fund, a political committee ("the Committee"), regarding application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the sale of books by the Committee to corporations.

Your letter poses a situation where the Committee publishes a book which it intends to sell to individuals at a profit. You contemplate a time when a disposal and cost recovery may be more important than profit. Thus you ask if there are any circumstances under which the Committee could accept payment for book sales via a corporate check. Specifically you ask whether selling the books at cost or below cost would make a difference regarding corporate purchase.

The Commission is of the opinion that regardless of the price the Committee could not, under the circumstances you describe, sell books to a corporate purchaser. As you appear to be aware, under the Act and regulations a corporation is prohibited from making a contribution to a political committee. See 2 U.S.C. 441b and 11 CFR 114.2(b). Section 441b(b)(2) defines a "contribution" to mean, in part, "any payment,... or gift of money or anything of value..." to a campaign committee, or a political party or organization, in connection with any Federal election. Your request indicates that the publication and sale of the book is intended to be a profit making device for the Committee. It is a means of fundraising, the books being the fundraising item. The Commission has previously concluded that the full amount paid by a purchaser to a political committee or candidate for a fundraising item is a contribution, see Advisory Opinion 1975-15 (copy enclosed). Moreover, the Commission recognized that the contributor's receipt of something of value in exchange for a political contribution did not change the character of the

activity from a political contribution into a commercial sale/purchase transaction. Advisory Opinion 1979-17 (copy enclosed) citing AO 1975-15. Thus the total price paid by the buyer is a contribution.

Your request suggests that if the amount paid by the corporation is either below or equal to cost, a contribution would not result. As the Commission stated in AO 1975-15 when discussing a fundraising activity, "[A]s a general matter, a person who transmits money to a political committee or candidate - any portion of which is available to be spent for the purpose of influencing a Federal election - has made a contribution in the full amount of the funds so transmitted." This encompasses both cost and profit. This principle applies regardless of the item's value and whether or not a profit is actually realized. If, when cost recovery or loss reduction is more important than profit, the Committee desires to sell the books at cost or below, the amount of the payment by the purchaser still results in a contribution to the Committee since the Committee is receiving funds that will be available for its political purposes.

You further suggest that if no profit is realized the situation is similar to the disposal of assets such as desks. The Commission is of the opinion that this is not the case. In prior opinions the Commission permitted excess campaign assets and contributor lists to be sold without contributions resulting from such sales. Advisory Opinions 1979-24 and 1979-18 (copy enclosed). In those situations the items sold were either campaign equipment which was originally purchased for and used during the campaign by the campaign committee and then sold with the proceeds applied to satisfy its debts so the committee could terminate; or an asset the value of which was developed by the committee in the normal course of its operations and primarily for its own use rather than to sell to others. Neither situation involved the sale of items which were specifically acquired or developed for general fundraising purposes such as the sale of books as described in your request.

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 (AO 1975-15, AO 1979-17, AO 1979-18, AO 1979-24)