



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 21, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-125

John M. Cogswell
431 West Colfax Avenue
Denver, Colorado 80204

Dear Mr. Cogswell:

This responds to your letter of October 16, 1980, supplementing an earlier letter of September 3, 1980, requesting an advisory opinion on behalf of the Cogswell for Senate Committee 1980 ("the Committee"), concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to the receipt of a contribution of 100 silver dollars.

According to your request the Committee received a \$100 cash contribution in the form of silver dollars which the Committee is holding in escrow. You explain that the contribution was made unconditionally, that is, the contributor did not express his intention as to whether the contribution was to be used to make expenditures or to be sold on the silver commodities market. You state that the campaign's intention is to make expenditures using the silver dollars. Thus, it appears that the Committee does not intend to sell the silver dollars on the commodities market. You do, however, state that the Committee intends to make expenditures using the silver and not to convert them into paper currency. Moreover, the campaign negotiated one month's salary with a particular person for the sum of 100 silver dollars.

The question you raise is whether a campaign contribution made in the form of 100 silver dollars is to be valued and reported as a \$100 cash contribution or at an amount which reflects the value of silver as a commodity?

2 U.S.C. 431(8)(A) defines "contribution" to include, in part, "any gift,... deposit of money, or anything of value made for the purpose of influencing any election for Federal office." Commission regulations which follow and elaborate on that definition include a subsection which states that for purposes of the section the term "money" includes, among other things,

currency of the United States. 11 CFR 100.7(a)(1). The Act, specifically 2 U.S.C. 441g, recognizes that contributions may be made in the form of currency as long as the aggregate of contributions of currency by any person to or for the benefit of a candidate does not exceed \$100.

There is nothing in either the Act or the regulations which states how a contribution made in the form of currency is to be valued. It would thus appear that the value put upon a contribution of currency, which has the potential to be treated as either a contribution of money or an in-kind contribution with a different value, is to be determined by the manner in which the currency is treated and the monetary value the Committee receives therefore.

2 U.S.C. 432(h)(1) and Commission regulations at 103.3(a) require that all "receipts received by" a political committee shall be deposited in a committee account. Thus, the silver dollars, if treated by the Committee as a contribution of money rather than an in-kind contribution or an item to be sold, must be deposited in the Committee's bank account as a \$100 deposit. This would result in \$100 being added to the Committee's bank balance. If the silver coins were handled in that manner, the Committee would be treating the silver coins as currency and the contribution would be considered as the face value of the coins. The Committee would report it as a \$100 contribution.

If, however, the 100 silver dollars are not treated as a receipt of money and deposited in a Committee account, but rather are treated as an in-kind contribution of a commodity to be liquidated, 104.13(b) of the Commission's regulations would be applicable. Under that section the amount of an in-kind contribution is equal to the fair market value of that item on the date received. Thus, the silver coins, if treated as an in-kind contribution of something of value, would be valued at whatever the fair market value of those silver coins was on the day the coins were received by the Committee. This would be determined by the price of silver coin on the silver commodities market.

You state that the Committee intends to make expenditures using the silver dollars and not converting the coins into paper currency. You also state that it was for this reason that the campaign negotiated one month's salary with a person for the sum of 100 silver dollars. In your earlier letter you indicate that some of your staff are willing to work for fewer silver dollars than paper dollars. You also raise the question of how that situation should be handled for income tax purposes.

As has been explained in this opinion, all receipts, are to be deposited in a campaign depository. Thus, all contributions of money, including currency as well as checks, must be deposited. If the Committee does not deposit the coins but rather sells or exchanges those coins for goods or someone's services, it would appear that the Committee itself is treating the coins not as currency with a certain face value, but as a commodity with a potentially different value. In that situation the coins must be valued at the market value for silver coins on the day the contribution was made. Since 2 U.S.C. 441a(a)(1) limits a contribution made by a person to any candidate and his authorized political committee to \$1,000, if the market value of the silver is such that the value of the 100 coins is greater than \$1,000 the contribution would be excessive.

In light of the foregoing discussion the Commission concludes that the value of the 100 silver coins is determined by the manner in which they are treated. If deposited as a \$100 deposit in a campaign depository the value of the contribution is \$100 and should be reported as such. If on the other hand, the silver coins are either sold or are directly used to make expenditures, the value* of the coins would be determined by the fair market value of the silver coins on the day the contribution was made. In the specific situation you present, negotiating a salary based on payment in silver coins rather than paper currency, the Committee is not treating the coins as currency. Thus, the value given to the coins must be determined by their market value. If that total value is greater than \$1,000 the contribution is excessive, and the excess must be returned to the contributor either in the form given, i.e. silver dollars, or in an amount equal to the excess which reflects the value of the silver dollars on the date of receipt by the Committee.

The Commission may not address your questions concerning income tax since they are not within its jurisdiction.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

John W. McGarry
Vice Chairman for the
Federal Election Commission

* The Commission notes that your request discusses the silver coins in terms of either currency or silver as a commodity. Thus, this opinion does not consider treatment of the silver coins in another manner such as collectors' items with a corresponding value as rare coins.