

DISSENT OF COMMISSIONER FRANK P. REICHE

TO ADVISORY OPINION 1980-34

In Advisory Opinion 1980-34 the Commission, by a 4-1 vote, held that the donation by artists of paintings and sculpture to the Connally for President Committee, did not constitute contributions by the artists to the Committee. Instead, the Commission determined that the purchase of these works of art by third parties constituted contributions to Mr. Connally's committee in the full amount paid by such purchasers even though the prices paid were those which one presumably would have had to pay on the open market and even though the contributors in all probability did not intend thereby to make a contribution to the Connally Campaign.

I find this result totally unrealistic and inequitable to the parties involved. It is also at variance with the facts and with the legislative intent and purpose in excluding from the definition of "expenditures" ^{contribution} under the Act volunteer services rendered to campaigns. While this is the view which the Commission has consistently taken in such matters, I find it abhorrent to a sense of fair play because it thereby permits one individual to contribute many times that which other individuals can contribute to political campaigns. The rock star or the stand-up comedian, for example, may thereby donate services worth literally hundreds

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of thousands of dollars while the ordinary individual is limited to contributions not exceeding one thousand dollars (\$1,000) per election. The volunteer services exception, which was introduced by Senator Buckley in 1971, was designed not to permit the donation of unlimited professional services to a campaign, but rather was intended to encourage grassroots participation in the day-to-day conduct of political campaigns. It is the volunteer working at campaign headquarters that this exception was designed to protect, not the professional entertainer or artist seeking a means of contributing significantly to the campaigns of those candidates whom they favor.

Turning our attention to the individual who purchases a painting or buys a ticket to the concert, the proceeds of which are donated to a political candidate, the vast majority of people making such purchases do not intend thereby to make a contribution to a political candidate, or are, at the least, little interested in making such contribution as contrasted with obtaining an item which they would likewise be happy to purchase commercially even if there were no political stimulus for doing so. Only if the purchase price of such painting or ticket exceeds the normal purchase price for such an item should any contribution be thereby deemed to have been made by such purchaser to a political candidate.

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In light of the legislative history on this point and the manifest inequity of the Commission's treatment of such in-kind contributions by artists and entertainers, I take strong exception to the prevailing Commission view that construes such activity to be a contribution in toto by the purchaser and no contribution by the artist or entertainer. To the contrary, I would hold that it is a contribution by the artist or entertainer and would limit the value of such contributions to the same one thousand dollars which applies to other individual contributions. As regards the purchasers of these items, I would hold that no contribution has thereby been made by them to political campaigns as long as the prices paid by them do not exceed those which would otherwise be deemed commercially reasonable.

Dated: May 22, 1980



Commissioner Frank P. Reiche