



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 23, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-34

Mr. Michael R. Gardner
General Counsel
Connally for President Committee
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Gardner:

This responds to your letter of March 31, 1980 as supplemented by letter of April 23, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the donation and subsequent sale of artwork by the Connally for President Committee ("the Committee").

Your letter states that several artists have offered to create artwork (i.e. paintings and sculpture) and to donate it to the Committee. The Committee intends to accept the art from the artists, and to reimburse them in full for the cost of the basic materials used to create the artwork and for the cost of transporting it to the Committee.

After receipt of the art objects, the Committee intends to retain an independent art dealer to sell the artwork in accordance with normal business practices, e.g., through sales in a gallery, auction, or otherwise. The committee will not publicize the sale of its artwork; the dealer will be instructed either to identify the art merely as part of "the Connally Committee Collection" in order to assure potential buyers of the soundness of the seller's title to the art or alternatively, the art dealer will be instructed not to reveal the owner's identity.¹

The dealer will at no time suggest to the public that the art sale is being conducted to solicit campaign contributions from the public. The purchaser will pay the dealer for the artwork in cash or by check made out to the art dealer. After deducting a normal commission, the dealer will

¹ You state that the Committee will abide by whichever formula the Commission concludes would be consistent with the Act.

transmit the remainder of the funds received to the Committee. Under these circumstances you ask the Commission to determine:

- (1) Whether the donation of the artwork to the Committee constitutes a contribution by the artist, and
- (2) Whether the subsequent purchase of the artwork would represent a contribution from the individual purchaser.

In answer to your first question, the Commission concludes that because the Committee will reimburse the artist for the cost of the materials used to create the artwork, the time and effort supplied by the artist in creating the artwork does not constitute a contribution from the artist to the Committee. The Commission has previously recognized that the donation of an artist's services to create a work of art specifically for a candidate or political committee is analogous to the free appearance of a performer at a fundraising event for a candidate and would fall within the volunteer service exception of 2 U.S.C. 431(8) (B) (i) and 11 CFR 100.7(b) (3). See Advisory Opinions 1979-35 and 1975-97, copies enclosed.

As to your second question, it is the Commission's view that the Committee's sale of the artwork is fundraising activity since the funds so raised will be transmitted to and spent by the Committee to retire its outstanding obligations which were incurred for the purpose of influencing a Federal election. The fact that the Committee sells the artwork through the agency of an independent art dealer (rather than selling it directly)², that payment is made to the art dealer (and subsequently transmitted to the Committee), and that the purchaser receives "a valuable and aesthetically-pleasing asset" in exchange for such payment does not change the essential character of the activity from fundraising into a commercial sale/purchase transaction. See Advisory Opinions 1979-17, and 1979-76, copies enclosed.

The Commission has previously recognized that 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 an election - has made a contribution³ in the full amount of the funds so transmitted. See Advisory Opinions 1975-15, and 1975-49, copies enclosed. Accordingly, the Commission concludes that the full amount of the purchase price paid by the individual for the artwork constitutes a contribution from the individual to the Committee subject to the limitations and prohibitions of the Act. See 2 U.S.C. 441a, 441b, 441c, and 441e. Likewise, all financial transactions of the Committee related to the sale of the artwork to the contributors, the reimbursement to the artist for the basic materials and the commission paid to the art dealer, are reportable under 2 U.S.C. 434. Furthermore, because of the political purpose underlying the procurement and sale of the artwork, namely to engage in a political fundraising activity and thereby support and aid a candidate's campaign by the retirement of its debts, the Committee

² The Commission notes that the provisions of 11 CFR 104.13 do not apply to the situation presented here since donation of the artwork to the Committee originally was not a contribution by virtue of the volunteer service exception at 2 U.S.C. 431(8) (B) (i). Section 104.13 would apply to a subsequent sale of the artwork by the Committee only if it had initially been treated as a contribution at its fair market value.

³ Interest from a campaign committee's savings account or income from investments are not considered to be contributions. See Advisory Opinions 1975-41, and 1976-25, copies enclosed.

should instruct the art dealer to identify the art as part of the Connally Committee Collection and to advise potential buyers that the proceeds of the "sale" are political contributions to the Committee. Compare Advisory Opinions 1979-6, 1977-8, and 1977-23, copies enclosed.

The Commission expresses no opinion as to any tax ramifications in the foregoing situation since those issues are outside 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)

Robert O. Tiernan
Chairman for the
Federal Election Commission

Enclosures (AOs 1979-17, 1979-76, 1979-6, 1977-8 and 1977-23)