

DISSENT OF COMMISSIONER FRANK P. REICHE

TO ADVISORY OPINION 1980-42

The approval by the Commission of Advisory Opinion 1980-42 by a 4-1-1 vote illustrates more vividly than ever the artificial nature of the Commission's approach to the donation of services and artistic works by entertainers and artists and its characterization of such as contributions by the purchaser, rather than the donor. In this Opinion the Commission has responded to a series of questions posed by the Hart for Senate Campaign Committee concerning fundraising concerts on behalf of the Committee where it is anticipated that the entertainers involved will provide free services.

These proposed concerts have all the earmarks of commercial events. The Committee plans to contract with a commercial promoter to stage the concerts. The promoter in turn will pay all concert expenses from ticket sale proceeds and will then forward the balance of these proceeds to the Committee. In return therefor the Committee will pay the promoter his normal commercial fee. Even the ticket sales will be handled in commercial fashion at regular concert ticket

outlets. The Committee indicates that it will inform ticket sellers of Commission recordkeeping requirements, dollar limits and prohibited contributions, but there is scant indication, either in the advisory opinion request or in the Commission's response thereto, of the ways in which the prospective purchasers will be informed of these restrictions. Thus, we have a clear example of commercial entertainment which, because of the Commission's traditional characterization of the ticket purchaser as the political contributor, will necessarily involve in the campaign finance reporting process a number of individuals who have little or no interest in the political aspects of such events, but rather are interested primarily in attending concerts or in reaping a commercial profit therefrom.

The Commission's responses to these questions and their impact upon those who participate in this facet of the political process contain more twists and turns than a well-designed pretzel. For example, the Commission's preordained conclusion in such matters requires that the promoter be deemed the agent of the Committee, a result which he scarcely contemplated in agreeing to manage the concert and which is antithetical to his commercial involvement therein. In its answers to individual questions the Commission also requires the establishment of a special bank account by the "agent" in a depository designated by the Committee. The promoter is further required to handle all ticket proceeds as if they were political contributions. The promoter's account is regarded as a Committee

account. The 10-day deposit requirement is met by depositing sums in the promoter's special account to be established at the Committee-designated depository. The promoter is similarly required to fulfill all recordkeeping duties of the Federal Election Campaign Act.

With respect to notification to the purchasers of concert tickets, the Commission in its opinion declared, "...in order to assure that ticket purchasers are the contributors and are within the contribution limits of the Act, and to assure that purchases are not made by persons who are prohibited by the Act from making political contributions, it is necessary for the Committee to publicize the political fundraising purpose of the concert in a manner that would afford notice to potential and actual ticket purchasers that the proceeds of their ticket purchases will benefit the Committee". While the Commission imposes such a requirement as a corollary of its preconceived notions in this area, it does not indicate how this obligation may be discharged by the Committee, or by the promoter on its behalf. Specifically, the Commission has not required that any notification of the political fundraising purpose of the concert be inserted in advertisements, except at the box office. The Commission also declined to require any sponsorship statements on the tickets themselves, basing its conclusion on the small item exemption contained in Regulation 110.11(a)(2). Unfortunately, the small item exemption pertains to such matters as

campaign materials and bumper stickers which do not solicit funds, whereas the purchase of a ticket involves a direct solicitation of funds.

Moreover, the ridiculous nature of this conclusion is illustrated by the Commission's response to question No. 9 which concerns the detail that advertisements must contain with respect to legal limitations and prohibitions on campaign contributions. The requestor asked whether or not electronic and print advertisements must advise potential contributors that corporate, national bank or labor union contributions are prohibited, and also whether individuals must be advised that foreign nationals may not contribute. Furthermore, the requestor asked whether such advertisements must advise parents of minor children of the legal requirements that contributions made by minor children be made knowingly and willingly by the child from his or her own funds. Finally, the requestor asked whether purchasers must be advised of campaign contribution limits and the aggregation laws. The Commission's response to this series of questions is totally inadequate and provides little or no guidance for people contemplating the activities proposed by the requestor.

The greatest problem in my view, however, is the failure of the Commission to consider realistically the factual scenario presented by the Committee. We are discussing here the commercial purchase of tickets for a concert at a theater or stadium box office. It is both presumptuous and illogical for the Commission to believe under these circumstances that notice can effectively be given at such locations concerning legal limitations upon campaign contributions, and yet, it is the Commission's predisposition to consider the total

amount paid by the purchaser of a ticket a campaign contribution that forces it to engage in such specious reasoning. It is likewise unrealistic to expect a commercial promoter to satisfy the recordkeeping requirements of the Act where there is such a heavy volume of box office purchases, both by check and cash. One could elaborate upon the convoluted aspects of this approach, but the real vice is the Commission's refusal to acknowledge what is, in fact, the truth in the vast majority of these cases, i.e., that the purchaser of a ticket to a concert or some other entertainment event, or the purchaser of an artistic rendering, is not normally interested in making a contribution to the campaign of a candidate who benefits thereby. To the contrary, it is the entertainer or artist who, by his or her personal donative act, is making a political contribution.

As I previously noted in my dissent to Advisory Opinion 1980-34, it is unfair to permit an individual, just because he or she happens to be an entertainer, artist or other professional, to make a contribution to a political campaign many times the value of that which other citizens are able to make, i.e., \$1,000. 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 to bankroll the campaigns of those candidates whom they favor.

Thus, it is my view that the activity contemplated by the Committee in this case should not be construed by the Commission as political contributions by the purchasers of concert tickets, but should instead be deemed contributions by the entertainers with such entertainers being restricted to the same \$1,000 limit which applies to every other citizen.

Dated: 6/25/80

Frank P. Reiche
Frank P. Reiche, Commissioner