



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 25, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-42

Harold A. Haddon, Campaign Manager
Hart for Senate Campaign Committee, Inc.
P.O. Box 18566
Denver, Colorado 80218

Dear Mr. Haddon:

This refers to your letter of April 4, 1980, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to fundraising concerts to be conducted on behalf of the Hart for Senate Campaign Committee ("the Committee") during 1980.

Your letter states that several entertainers are expected to provide free services for fundraising concerts on behalf of the Committee and that advertising and ticket sales for the concerts will be performed under contract with a promoter who will act as agent for the campaign. Pursuant to contract the promoter will pay for concert expenses from ticket sales proceeds and will forward the balance of the proceeds to the Committee. The Committee will pay the promoter a normal and usual fee for his services. Ticket sales will be made at outlets normally used for commercial concerts, and tickets issued will be identical to those used for commercial concert events of a non-political nature. Your request further explains that procedures will be established to inform ticket sellers of Commission regulations concerning information required when political contributions are made, dollar limits, and prohibited contributions.

Based on the described proposal the Committee sets forth several specific questions with respect to which it requests an advisory opinion. The questions are stated and responded to in sequence.

1. Are there any violations of federal campaign laws or regulations entailed in a contractual arrangement whereby an entertainer agrees by contract to provide free

services to a campaign, provided that the campaign committee reimburses the entertainer for all expenses incurred by that entertainer and any corporate entity providing supporting services or facilities to the entertainer?

The Act provides that the term "contribution" does not include the value of services provided without compensation by any individual who volunteers on behalf of a candidate. 2 U.S.C. 431(8)(B)(i). Past advisory opinions of the Commission have concluded that the volunteer services exemption is available to entertainers and other artists. Advisory Opinions 1975-97 and 1979-35, copies enclosed. Accordingly, the entertainer may agree to provide free services to the Committee without the value of those services being considered as a contribution either for limit purposes or for disclosure purposes. However, this exception is limited to the value of the volunteer services and would not exempt expenses incurred by the entertainer, nor by any corporate entity providing supporting services or facilities to the entertainer in connection with rendering volunteer services. Your question indicates that the Committee will reimburse all expenses incurred by or on behalf of the entertainer in providing the volunteer services of the entertainer. Accordingly, the question does not arise as to the treatment of these expenses as a contribution in-kind to the Committee by the entertainer or any corporate entity. See 2 U.S.C. 441b; also see 2 U.S.C. 431(8)(A)(i), 441a and Commission regulations 11 CFR 100.7(a)(1)(iii) at 45 Fed. Reg. 15096 (March 7, 1980), effective April 1, 1980.

2. Are there any violations of federal campaign laws or regulations entailed in a contractual arrangement whereby the campaign hires, as its agent, a promoter who for a commercially usual fee handles advertising, ticket sales, security, production, and concert hall rental for the campaign committee?

The Act does not prohibit the Committee from entering a contract with a promoter to handle advertising, tickets, security, production and concert hall rental for the Committee provided the consideration paid by the Committee represents the usual and normal charge for the goods or services at the time of the contractual agreement. See 11 CFR 100.7(a)(1)(iii) and 100.8(a)(1)(iv), id. at 15099. See also Advisory Opinion 1979-36, copy enclosed.

3. May such a promoter pay all normal and usual expenses for such a concert directly, and not by Committee check, from the proceeds of the concert ticket sales?

4. If the promoter may pay expenses as proposed in paragraph 3, above, is it permissible for the Committee to keep records of and report simply the payments made directly to the promoter for his fees and the concert expenses, rather than reporting separately each individual expense paid by the promoter?

The promoter as agent for the Committee may pay all concert expenses directly from proceeds of concert ticket sales. However, such check must be drawn on a special bank account established by the agent for this purpose in a depository institution designated by the Committee. 2 U.S.C. 432(h). Payments made by the promoter in connection with fundraising concerts on behalf of the Committee are effectively made by the Committee since the promoter is a Committee agent. The Act and Commission regulations require that all Committee

disbursements (other than petty cash not in excess of \$100 to any person in connection with a single purchase or transaction, 2 U.S.C. 432(h)(2)) be made by check or similar draft drawn on an account of the Committee which is established at a designated Committee depository. 2 U.S.C. 432(h)(1) and 11 CFR 102.10, 103.3 at id. 15107, 15108. Furthermore, the Commission stated in Advisory Opinion 1980-17 that fundraising expenses of a political committee that were reimbursed to individuals who solicited and raised contributions for the committee were committee expenditures for purposes of the Act. This treatment of fundraising expenses is not changed by the fact that the promoter will pay concert expenses directly from concert proceeds. Such direct payments are viewed as Committee expenditures made by the promoter as agent for the Committee.

Since the payments are Committee expenditures, all recordkeeping and reporting requirements of the Act are applicable. Compensation, whether in the form of a percentage or fixed fee, paid to the promoter for concert services rendered may be reported as an operating expenditure of the Committee with the promoter identified as the payee (assuming such expenditures aggregate over \$200 in calendar year 1980). 2 U.S.C. 434(b)(4), (b)(5)(A); 11 CFR 104.3(b)(4), id. at 15111. However, other Committee expenditures (aggregating over \$200 to the same vendor in 1980) for the concert which are made by the promoter as the Committee's agent must be recorded and reported in a manner that: (a) identifies the payee who provides goods or services to the Committee or its agent in return for the payment; and (b) discloses the purpose of the disbursement via a brief statement or description of why the disbursement was made. 11 CFR 102.9(b) and 104.3(b)(4)(i), id. at 15107, 15111.

5. Must all ticket sale proceeds be deposited in the Committee account immediately upon receipt, or may the promoter retain these proceeds in his own account until all expenses are paid and then remit the balance to the Committee?

Since all ticket sale proceeds are proposed to be treated as contributions from the "purchaser," rather than from the entertainer, those proceeds must be handled as contributions. This means that the promoter may, subject to authorization by the Committee treasurer, establish a special account (or several such accounts) at a designated Committee depository for the deposit of all fundraising concert proceeds. Such account may be used to retain concert proceeds or to pay concert expenses, but is regarded as an account of the Committee since the promoter is a Committee agent. See Advisory Opinions 1979-39 and 1977-22 which involve circumstances where, as here, contributions for political committees that were received by other entities or persons on behalf of the committee were regarded as contributions to the committee.

The Act and Commission regulations provide that contributions received by any person for an authorized committee shall be forwarded to the treasurer no later than 10 days after receipt. 2 U.S.C. 432(b)(1); 11 CFR 102.8(a), id. at 15106. Such contributions must, upon receipt by the treasurer, be deposited in a designated depository within 10 days of the treasurer's receipt. 11 CFR 103.3(a), id. at 15108. If the promoter acts as an agent of the Committee's treasurer and deposits the ticket sale proceeds in an account at a designated Committee depository within 10 days of the promoter's receipt, these requirements would be met.

In addition to the foregoing requirements, the promoter as agent for the Committee must generally fulfill all the recordkeeping duties of the Act and Commission regulations. 2 U.S.C. 432 and 11 CFR 102.9, id. at 15106-15107.

6. In advertising such an event to the public, is it sufficient to state in all such advertisements that the advertisement itself is "Paid for by Hart for Senate Campaign Committee, Inc.," or should the advertisements further specify that the event is sponsored by and is a benefit for the campaign?

7. Must people be advised by advertising and/or at the time they purchase a ticket, that purchase of a ticket is a political contribution?

The Act and Commission regulations do not delineate the specific content of advertising for political fundraising activity such as the described concerts; where expenditures are made to finance communications that solicit contributions through various media, the communication is required to include a statement of sponsorship. 2 U.S.C. 441d; 11 CFR 110.11, id. at 15119-15120.

In circumstances where a fundraising concert is being utilized to raise political contributions, the legal and factual issue presented is whether the proceeds of ticket purchases for the concert are political contributions by the purchasers,* or by the entertainer who volunteers her services for a public concert to assist the candidate's fundraising efforts. 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. The notice should be conveyed both through any publicity that is done in advance of the concert as well as at any location where tickets are sold.

8. Must tickets issued by ticket outlets for admission to the concert contain a campaign "disclaimer" and/or a statement that the campaign is sponsoring the event?

The tickets themselves would not require any of the sponsorship statements prescribed by 2 U.S.C. 441d or Commission regulation, 11 CFR 110.11 at 45 Fed. Reg. 15119-15120 (March 7, 1980), effective April, 1980. This conclusion is based on the small item exemption in 110.11(a)(2) and assumes that the tickets would be comparable in size to those generally used for entertainment events. However, as explained in responding to questions 6, 7 and 9 it is necessary

* Commission regulations directly apply to this situation where contributions raised through concerts are submitted by Presidential candidates for primary matching funds under 26 U.S.C. 9031 9038, et seq. See 11 CFR 9034.3(1) at 44 Fed. Reg. 20345-20346 (April 4, 1979), effective May 7, 1979.

that notice of the political fundraising purpose of the concert be given at any location where tickets are sold.

9. What detail must advertisements provide with respect to legal limitations on campaign contributions? For example, (a) must all electronic and print advertisements advise potential contributors that corporate, national bank or labor union contributions are prohibited? (b) must such advertisements advise individuals that foreign nations may not contribute? (c) must such advertisements advise parents of minor children of legal requirements that contributions made by minor children be made knowingly and willingly from funds of the child? (d) and must purchasers be advised of campaign contribution limits and the aggregation laws?

The Commission will not require that "all electronic and print advertisements" publicizing the concerts to the public include the information described in question 9. The Commission has, however, noted in Advisory Opinion 1977-22 that appropriate precautions must be taken whenever and wherever concert tickets are sold to assure that any person who purchases a ticket is not within the category of persons prohibited by the Act from making a contribution. See 2 U.S.C. 441b, 441c, 441e, 441f, 441g. Controls must also be established and followed to assure that ticket purchasers are within their applicable contribution limits under 2 U.S.C. 441a and to assure that the required information as to contributor identity is obtained whenever any person's ticket purchases at the same selling location exceed \$50. 2 U.S.C. 432(b), 11 CFR 102.9 at id. 15106; see also AO 1977-22.

10. Must checks for payment of tickets be made to the Committee, or may they be made payable to the promoting agent and/or the ticket outlet handling ticket sales?

The Act and Commission regulations do not specifically address the manner in which the payee should be identified on checks used to make political contributions, except in the context of contributions submitted for matching Federal payments under Title 26 of the U.S. Code. Thus it is not necessary for the checks to be made payable to the Committee although it is preferable. Contribution checks that are payable to the promoter, or a ticket sales outlet, must be handled through special accounts established in Committee designated campaign depositories as discussed above in responding to questions 3, 4 and 5. They may not be deposited and processed through any other general accounts of the promoter or ticket sales outlets. Compare 2 U.S.C. 432(b)(3) and 11 CFR 102.15 id. 15108.

11. If a promoter fails to follow contractual requirements for obtaining required FEC information and/or for adequately informing the public of the political nature of the event, may the promoter's actions be rectified by the following action: (1) further advertisements clarifying the political nature of the event; (2) publicly offering refunds to any person who does not desire to contribute to the campaign; and (3) requiring all persons to fill out cards supplying all required FEC information at the admission door of the event?

This question relates primarily to past activity and does not include a complete description of the specific facts, e.g. the circumstances surrounding the promoter's failure "to follow contractual requirements." Accordingly, this question is not appropriate for advisory opinion treatment. See 2 U.S.C. 437f and 11 CFR 112.1 at id. 15123.

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)

Max L. Friedersdorf
Chairman for the
Federal Election Commission

Enclosures (AOs 1980-17, 1979-39, 1979-36, 1979-35, 1977-22, and 1975-97)