



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 5, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-89

The Honorable Tony Coelho
Member of Congress
United States House of Representatives
216 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Coelho:

This is in response to your letter of July 25, 1980 requesting an advisory opinion on the applicability, if any, of Federal election law to the donation of consumable products (beverages and food) for use in connection with receptions in your Congressional district offices.

Your request states that in connection with your duties as a Member of Congress, you have established a District-wide Arts Committee for the 15th Congressional District of California to advise you on matters pertaining to the arts in general, and specifically with respect to pending or proposed legislation in Congress. You anticipate hosting occasional receptions in your District office's, to which Committee members and any others expressing an interest in the arts would be invited. In addition, others are encouraged to attend and the public is welcome.

Specifically, you ask whether Federal election law would apply to donations by corporations, partnerships, sole proprietorships and individuals of food and beverages for use in connection with the receptions described above.

The Commission notes that, in addition to serving as a Member of Congress, you are presently a candidate for reelection to Congress. However, the receptions as described in your request do not appear to be held in connection with or for the purpose of influencing your reelection but rather for the purpose of carrying out your duties as a Federal officeholder. Accordingly, any donations of food and beverages for use in connection with the receptions would not constitute a "contribution" or "expenditure" for the purposes of the Federal Election

Campaign Act of 1971, as amended ("the Act"). See the definitions of "contribution" and "expenditure" at 2 U.S.C. 431(8) and (9), 441b

However, the Commission assumes and conditions its opinion on (a) the absence of any communication expressly advocating the election or defeat of any candidate for Federal office, and (b) the avoidance of any solicitation, making or acceptance of contributions to any candidate for Federal office. See Advisory Opinions 1977-27, 1977-42, 1977-50, 1977-54, 1978-4, 1978-44, 1978-56, 1980-16, 1980-22. (Copies of the 1980 opinions are enclosed.) If either of the foregoing activities occur in connection with the receptions, then the donation of food and beverages for use in connection with the receptions may be deemed to be a "contribution" or "expenditure" subject to the Act and Commission regulations. Note, in particular, the limits and prohibitions of 2 U.S.C. 441a and 441b. See 11 CFR 113.4(a) and (b). Under such circumstances, donations of food and beverages purchased with corporate treasury funds would constitute a prohibited corporate expenditure and contribution. 2 U.S.C. 441h(a) and 441b(b)(2). Donations of food and beverages by an individual would be a permissible in-kind contribution, provided that the fair market value of such products at the time of the contribution does not exceed \$1,000. 2 U.S.C. 441a(a)(1)(A); 11 CFR 100.7(a)(1) (iii)(A)-(B). Similarly, donations by a sole proprietorship would be treated as an in-kind contribution by the individual who is the sole proprietor of the business and would, therefore, be subject to the \$1,000 contribution limitation as well. See Advisory Opinion 1975-31, copy enclosed. Such donations by a partnership would be a permissible in-kind contribution so long as the value of the products does not exceed \$1,000. See 11 CFR 110.1(e)(3). In addition, such a contribution by a partnership would be attributed to the individual partners in accordance with the provisions of 11 CFR 110.1(e)(1) and (2) and would count against each individual partner's limitation under 2 U.S.C. 441a(a)(1)(A). See Advisory Opinion 1975-17.

This opinion supersedes those portions of Advisory Opinion 1975-14 and Opinion of Counsel 1975-125 holding that donations to the office accounts of a Federal officeholder for the purpose of defraying expenses arising in connection with that office shall be conclusively presumed to be "contributions" and "expenditures" for the purposes of the Act. In light of the 1980 amendments to the Act and the regulations promulgated thereunder, this opinion also supersedes those portions of Advisory Opinions 1976-89, 1977-13, 1977-50 and 1979-25 which require reporting and disclosure of donations to the office account of a Federal officeholder for the purpose of defraying expenses arising in connection with that office. Compare 2 U.S.C. 439a (effective May 11, 1976) and 11 CFR 113.4 (effective April 13, 1977) with 2 U.S.C. 439a (effective January 8, 1980) and 11 CFR Part 113 (effective April 1, 1980).

The Commission expresses no opinion as to the effect, if any, of the Rules of the U.S. House of Representatives or of the Internal Revenue Code upon such donations of food and beverages.

This response constitutes an advisory opinion concerning the 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 1980-16, 1980-22, 1975-31, 1975-17)