



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 9, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-11

Mr. Eric O'Keefe
National Director
Libertarian National Committee
2300 Wisconsin Avenue, N.W.
Washington, D.C. 20007

Dear Mr. O'Keefe:

This is in response to your letter of February 10, 1981, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the proposed free use of the Clark for President Committee's mailing list by the Libertarian National Committee. You ask, in particular, whether a contribution would result if the Libertarian National Committee ("LNC") accepts free use of the Clark for President Committee's ("Clark committee") mailing list.

In general, the Act places a limit of \$20,000 per calendar year on the amount of any contribution that may be made by any person (other than a multicandidate committee) to the national committee of a political party. 2 U.S.C. 441a(a)(1)(B). The definition of "contribution" includes the gift of anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. 431(8)(A)(i). Commission regulations elaborating on the meaning of "contribution" specifically include "mailing lists" among the enumerated examples of anything of value. 11 CFR 100.7(a)(1)(iii)(A). The regulations also set forth the standard of determining the value of the contribution in kind. 11 CFR 100.7(a)(1)(iii)(B).

While the foregoing provisions would appear to require that the gift of the mailing list be viewed as a contribution subject to limit, that result does not necessarily follow in the circumstances presented. In this situation the donor of the list is the principal campaign

committee of a candidate who participated as a candidate in the 1980 election, and the recipient committee is a national committee of a political party.¹ Advisory Opinion 1975-129. Under, 2 U.S.C. 439a, a candidate is permitted to transfer excess campaign funds without limitation to any national party committee of a political party provided that those funds are in excess of any amounts necessary to defray his expenditures. "Excess campaign funds" are defined as funds which exceed the amount needed by a candidate to defray campaign expenditures. The candidate (through his authorized committee or directly) has discretion to determine at what point funds on hand exceed any amount necessary to defray campaign expenditures.² 11 CFR 113.1(e).

The Clark Committee's mailing list represents something of value to the committee that was made valuable by virtue of committee expenditures. It is thus materially indistinguishable from a campaign asset in the form of "campaign funds", that is, cash. The Act does not specify that only cash can be transferred.³ Contributions include anything of value and are not limited solely to cash. The Commission's regulations expressly include mailing lists among the enumerated examples of anything of value. 11 CFR 100.7(a)(1)(iii)(A). Therefore, the Commission concludes that if qualified as excess campaign funds, the proposed free use of the Clark Committee's mailing list by the LNC would not result in a contribution subject to limit under 2 U.S.C. 441a. It would, however, be subject to disclosure by both committees. See generally 2 U.S.C. 434 and 11 CFR 104.13.

The Commission cautions, however, that the use of excess campaign funds, in this case the mailing list, for purposes other than to defray campaign debts may compromise the Clark Committee's ability to establish the reasonableness of its efforts to retire outstanding debts if the Clark Committee at some future time wants to settle a debt for less than the amount owed on such debt.⁴ See the Commission's response to Advisory Opinion Request 1976-7101 (December 9, 1976), copy enclosed.

¹ This opinion does not present facts involving a candidate who received Federal funds under the provisions of 26 U.S.C. 9031 *et. seq.* Thus the discussion and conclusions herein do not reach any issues with respect to any repayment obligations arising under 26 U.S.C. 9038 and Commission regulations at 11 CFR 9034.5.

² The Commission notes that the 1980 Year End Report filed by the Clark Committee lists debts owed by the Committee totalling \$142,379.

³ In Advisory Opinion 1980-14 (copy enclosed) the Commission considered excess campaign items leftover from a previous campaign as the equivalent of a transfer of funds. The regulation applied in that opinion permitted unlimited transfers between campaign committees of the same person. See 11 CFR 110.3(a) (2)(iv).

⁴ The Commission's regulations indicate that debts owed to corporations may be settled only under certain conditions and settlements are subject to Commission review. 11 CFR 114.10.

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)

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosures (Re: AOR 1976-101 and AO 1980-14)