



FEDERAL ELECTION COMMISSION
Washington, DC 20463

DISSENTING OPINION IN ADVISORY OPINION 1982-24

of

COMMISSIONER FRANK P. REICHE

Approval by the Federal Election Commission of Advisory Opinion 1982-24 has heightened the confusion and magnified the absence of reason which has characterized Commission rulings affecting the donation of artistic and professional services and goods to political campaigns and the attribution of contributions as a consequence thereof. The factual pattern in Advisory Opinion 1982-24, however, differs from those previously considered by the Commission. We are dealing in this instance with the consignment by artists of artistic works to a political campaign for avowedly fundraising purposes since the campaign's sole interest is to raise monies by marking up the price that would normally be charged for such items. This excess would be retained by the campaign and the customary commercial price paid to the artist. Another distinguishing feature of this case is the fact that any items remaining unsold by the campaign would be returned to the artist.

Thus, you have a situation in which the artist is interested solely in the sale of his work product. He or she has no manifest intention of benefiting a political campaign in the process. This absence of donative intent on the part of the artist notwithstanding, there may be a contribution by the artist in these circumstances because it is he or she who enables the campaign to raise monies through this arrangement by consigning the art work to the campaign. The extent of such contribution, however, defies measurement. Despite my longstanding opposition to the application of the volunteer services exception in the Act to the donation of works of art and other professional services, it being my strong belief that the donors of such services and products should be limited to the same \$1,000.00 contribution limit which applies to others contributing to political campaigns, the practical difficulties of attempting to quantify the artists' contribution in this case dissuades me from such an effort.

The real problem here is the attribution to the purchaser of a political contribution in the full amount of the purchase price. This is not a situation in which the campaign can realize anything more than the margin between the normal commercial price and the higher price charged by the campaign in trying to sell consigned works of art. Indeed, there is no way under the agreement between the artist and the campaign that anything

more than the fundraising margin can be retained by the campaign. If the artwork is not sold, there will be no continuing benefit to the campaign since the campaign will be required to return the unsold works of art to the artist. The Commission's opinion would in effect create a contribution which exceeds the maximum that can be made under the circumstances. In addition, there is the problem of attributing a political contribution to a purchaser when only a limited contribution was contemplated or intended. My colleagues take refuge in a regulation adopted by the Commission subsequent to the enactment of the 1979 amendments to the Act, i.e. 11 CFR 100.7(a)(2) which states:

"The entire amount paid to attend a fundraiser or other political event and the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution."

My colleagues point to the fact that this regulation was not vetoed by the Congress. They thus deduce from this action or inaction on the part of the Congress that Congress agreed with the Commission.

There is little, if any, evidence that the Congress focused on this regulation, but regardless of the effect of Congress' failure to veto this regulation, all regulations must comport with the underlying statute, in this case the Federal Election Campaign Act. I have not found any evidence in the Act which would support the conclusion contained in such regulation, particularly as applied to a situation in which the fundraising benefit to a political campaign is limited by agreement. It is for this reason that I feel constrained to dissent from the Commission's opinion.