



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 30, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-24

Ms. Barbara B. Kerschner
Phillips for Congress Committee
23 Split Rock Road
Norwalk, Connecticut 06854

Dear Ms. Kerschner:

This responds to your letter of March 19, 1982, requesting an advisory opinion on behalf of the Phillips for Congress Committee ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended, ("the Act") and Commission regulations to the use of artwork for political fundraising.

You state that the Phillips for Congress Committee proposes to hold an art sale in September as a fundraising event. The Committee will receive the artwork on consignment from various artists for sale during the fundraiser. The artists will inform the Committee of the normal prices for the artwork that they would receive from a retail art gallery. The Committee will then raise the sales price above the price asked by the artist and attempt to sell the artwork to those who attend the fundraising event. Unsold artwork will be returned to the artists. The Committee asks (1), whether this arrangement would result in a contribution by the artist to the candidate, and (2), whether the entire price paid by the purchaser of the artwork would be a contribution to the candidate.

When a candidate sells an artist's work on consignment and the artist is then paid his/her normal price for such artwork, the artist has made no contribution to the candidate. 11 CFR 100.7(a)(1)(iii). In Advisory Opinion 1980-34, (copy enclosed) the Commission held that when an artist creates artwork for a Federal candidate with uncompensated volunteer services, no contribution occurs provided that the artist is paid for the basic materials used to create the artwork and for the cost of transporting it to the candidate. See also Advisory Opinion 1979-35, (copy enclosed). In the present case, however, the artists will consign their artwork to the Committee, rather than provide their volunteer services to create the artwork expressly for the

Committee, and will receive the price they would normally charge for the artwork. That price takes into account both the cost of the materials used to produce the artwork, as well as the value of the artists' services in creating it. In addition, the Committee will return all of the unsold artwork to the various artists.

The Commission has previously held that the entire purchase price of a fundraising item is a contribution from the purchaser to the candidate. See Advisory Opinions 1980-34, 1975-49 and 1975-15 (copies enclosed). The Commission's regulations, at 11 CFR 100.7(a)(2) provide that:

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. (emphasis added)

Therefore, any amount paid for the artwork at the fundraising event to be held by the Committee would be a contribution under the Act and subject to the contribution limitations and prohibitions of 2 U.S.C. 441a, 441b, 441c, and 441e as well as the reporting requirements of 2 U.S.C. 434(b) and 11 CFR 104.3.

The Commission expresses no opinion as to any tax ramifications in the foregoing situation since those issues are beyond its jurisdiction.

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,

(signed)

Frank P. Reiche
Chairman for the Federal Election Commission

Enclosures (AOs 1980-34, 1979-35, 1975-49 and 1975-15)