



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 9, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-41

H. Lee Halterman
District Counsel
The Committee for Congressman Ronald V. Dellums
3126 Shattuck Avenue
Berkeley, California 94705

Dear Mr. Halterman:

This responds to your letter of May 24, 1982, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the exchange of mailing lists with other organizations.

Your letter states that the Committee for Congressman Ron Dellums ("the Committee") uses the services of Richard Parker & Associates ("Parker") for the purpose of pursuing its direct mail fundraising efforts. Parker has proposed to the Committee that it allow an organization called Jubilee Housing ("Jubilee") to use 5,000 names from the Committee's mailing list. You state that rather than a direct bilateral exchange of names with Jubilee, Jubilee would arrange for the Committee to use 5,000 names from a mailing list of "civil rights backers" or of the group: A More Perfect Union. These organizations would, in turn, use 5,000 names from the Jubilee mailing list.

The Committee has received assurances from Parker that such a three way or multi-party exchange of lists is a routine and usual method of arranging for such exchanges. You assert that the consideration for which each party bargains is the use of a list that is of value to them. You ask whether the described exchange of lists, or any similar arrangement within the general practice of the trade, is an acceptable means of "paying" for the use of a mailing list, or whether the exchange would result in a contribution to the Committee that would be limited or prohibited under the Act. See 2 U.S.C. 441a, 441b.

The Commission concludes that the exchange of lists between the Committee, Jubilee, the "civil rights backers," and A More Perfect Union is permissible under the Act and does not result in a contribution being made by any of these groups to the Committee.

As you know, the regulations provide that "the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution." 11 CFR 100.7(a)(1)(iii)(A). A mailing list or a contributor list would fall within that provision. The regulations provide further that the " 'usual and normal charge' for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution..." 11 CFR 100.7(a)(1)(iii)(B). The Commission has recognized that if an exchange of names on a contributor list is an exchange of names of equal "value," as determined by industry practice, the exchange would be considered full consideration for services rendered. Thus, no contribution or expenditure would result and the transaction would not be reportable under the Act. Advisory Opinion 1981-46, copy enclosed.

You have indicated in your request that multi-party exchanges of mailing lists are "a routine and usual method of arranging" such transactions. The Committee understands that it will obtain use of a list of names of equal "value" from "Civil rights backers," or from A More Perfect Union, as part of an exchange whereby the Committee's list would be used by Jubilee who, in turn, would provide the use of its list to one of the other two groups mentioned. Under these circumstances, and assuming such multi-party exchanges are routine and usual in the list brokering industry, the Commission concludes that this exchange would not result in a contribution, but is instead a bargained-for exchange of consideration in a commercial transaction. Accordingly, nothing in the Act or Commission regulations would prohibit the Committee from undertaking the described exchange; nor is the transaction reportable under the Act.

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)

Frank P. Reiche
Chairman for the Federal Election Commission

Enclosures (AO 1981-46)