



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 24, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1983-2

James Richardson
Citizens for Emery Committee
P.O. Box 10139
Portland, Maine 04104

Dear Mr. Richardson:

This refers to your letter of January 12, 1983, which requests an advisory opinion regarding application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use of computer services to retire campaign debts, of the Citizens for Emery Committee ("Citizens").

Commission records indicate that Citizens was the authorized principal campaign committee of David F. Emery who was an unsuccessful candidate for the United States Senate in the 1982 general election in Maine. Your request explains that Citizens purchased computer equipment which it now proposes to use for the purpose of generating funds to pay off its remaining campaign debts. You ask whether Citizens may provide the use of its computer on a "fee-for-services basis" and enter into contracts with state committees, political candidates, nonprofit organizations, or private businesses. The funds realized from these ventures would be used to pay Citizens' remaining campaign debts. Citizens last report covering a period ending December 31, 1982, discloses debts outstanding in the amount of \$30,170 and cash on hand of approximately \$3,400.

The Commission concludes that Citizens may use its computer equipment to raise funds to retire its outstanding campaign debts only to the extent that all proceeds from such use are treated as contributions subject to the limits, prohibitions, and disclosure requirements of the Act and Commission regulations.

As you know, the Act and Commission regulations define the term "contribution" to include a variety of payments or things of value made by any person for the purpose of influencing any election to Federal office. 2 U.S.C. 431(8), 11 CFR 100.7(a). For purposes of 441b, which

prohibits contributions or expenditures by corporations and labor organizations in connection with any election to Federal office, the phrase "contribution or expenditure" includes any direct or indirect payment of money to any candidate for, Federal office, or to any campaign committee, in connection with a Federal election. The Commission in both its regulations and prior advisory opinions has emphasized that funds raised after an election to retire election campaign debts are just as much for the purpose of influencing an election and in connection with the election as are those contributions received before the election. See 11 CFR 100.7(a)(4), 110.1(g)(2); also see Advisory Opinion 1981-22, copy enclosed, and opinions cited therein.

In addition, the reporting provisions of the Act and Commission regulations, including specifically the various categories of receipts which political committees must report (with payor identification in certain instances), make clear that, with some exceptions, all receipts of a political committee are contributions under the Act and regulations. The exceptions include: fund transfers between authorized committees of the same candidate, bank loans (or the equivalent pursuant to 2 U.S.C. 431(8)(B)(vii)) made under specified conditions, rebates, refunds, other offsets to operating expenditures, dividends, interest, and other "forms of receipts." See, 2 U.S.C. 434(b)(2), 11 CFR 104.3(a)(3). No exception is made for funds designated to retire debts; nor is there an exception made for the proceeds realized from business or commercial ventures conducted by political committees.

In several previous advisory opinions the Commission has generally considered that business or commercial ventures of political committees are another form of fundraising for political purposes and has accordingly concluded that the proceeds from such ventures would be contributions subject to the Act. Advisory Opinions 1981-7, 1980-70, 1980-34, 1980-19, 1979-76, and 1979-17, copies enclosed. A limited exception to this view has been recognized by the Commission where a principal campaign committee, with outstanding debts and leftover campaign equipment, was allowed to sell the equipment in order to pay its debts and then terminate; the sale proceeds in that case were not considered to be contributions. See Advisory Opinion 1979-24, copy enclosed, and compare it with Advisory Opinions 1980-19 and 1979-76.

The Commission has also allowed political committees to exchange or sell their mailing or contributor lists without receiving a contribution if the amount (or other consideration) received for the list would not exceed the usual and normal charge. See Advisory Opinions 1982-41, 1981-53, 1981-46, and 1979-18, copies enclosed. The Commission has developed this mailing and contributor list exception because the Commission views such lists as a unique type of asset of the committees involved in that each list's value, at least in part, is determined on the basis of the committee's political fundraising efforts or other political use of the list.

The situation presented in this request is thus distinguishable from the sale and purchase of Citizens' mailing or contributor list(s), or some other unique asset whose value is based on Citizens' use of such asset. Neither does Citizens view the computer equipment as leftover assets that it proposes to sell outright and use the cash to retire its outstanding debts so that it may terminate. (Reports filed by Citizens disclose that approximately \$7,200 was spent in October 1982 alone for computer equipment.) Accordingly, Advisory Opinion 1979-24, summarized above, is distinguishable.

This proposal then is similar to those presented in that line of opinions where the funds realized from a business or commercial venture of a political committee were considered to be contributions. See, in particular, Advisory Opinions 1980-34, 1980-19, 1979-76, and 1979-17. In these four opinions the funds proposed to be received in exchange for a political committee asset (artwork in Advisory Opinion 1980-34, poll results in Advisory Opinion 1980-19, and books in Advisory Opinion 1979-76), or as consideration for the endorsement by a national political party leader of a bank's offering of credit cards (Advisory Opinion 1979-17), were characterized as contributions since such funds would be available for the election influencing purposes of the political committee and since no exception in the Act or regulations would allow the funds to be treated as miscellaneous receipts rather than as political contributions.

In view of the foregoing discussion, the Commission reiterates its conclusion that while the proposed use of Citizens' computer equipment is not prohibited by the Act or Commission regulations, the funds received from the "purchasers" must be treated as contributions for purposes of the Act and regulations. This means that the prohibitions, limitations, and disclosure requirements of the Act apply to the same extent as if Citizens was engaging in another form of political fundraising.

The Commission expresses no opinion as to any tax ramifications presented in this request since those issues are not within its purview.

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)

Lee Ann Elliott
Vice Chairman for the Federal Election
Commission

Enclosures (AOs 1982-41, 1981-53, 1981-46, 1981-22, 1981-7, 1980-70, 1980-34, 1980-19, 1979-76, 1979-24, 1979-18, and 1979-17)