



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

November 13, 1984

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-53

Randall B. Moorhead  
National Association of Realtors  
777 14th Street, N.W.  
Washington, D.C. 20005

Dear Mr. Moorhead:

This responds to your letter of September 24, 1984, requesting an advisory opinion on behalf of the Realtors Political Action Committee ("RPAC") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the leasing of real property by an individual to an agency of the Federal government.

You state that, on occasion, individuals who are members of the National Association of Realtors, RPAC's connected organization, lease real property to agencies of the Federal government such as the Postal Service. You ask whether such an arrangement would cause the member to be considered a "Federal contractor" within the meaning of the Act and Commission regulations.

Under 2 U.S.C. 441c, it is unlawful for a Federal contractor "directly or indirectly to make any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party, committee, or candidate for public office..." The Commission's regulations define the term "Federal contractor" to mean a person who

- (1) Enters into any contract with the United States or any department or agency thereof either for-
  - (i) The rendition of personal services; or
  - (ii) Furnishing any material, supplies, or equipment; or
  - (iii) Selling any land or buildings;

(2) If the payment for the performance of the contract or payment for the material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress.

The Commission concludes that a lessor of real property to an agency of the Federal government would be covered by the prohibitions of 2 U.S.C. 441c and therefore would not be permitted to make contributions to RPAC, to Federal candidates, or to any other Federal political committee.<sup>1</sup> A lease of real property creates an estate in the tenant (usually an estate for years) and represents, in effect, the sale of an interest in land or buildings to the lessee, with the rent as the purchase price.<sup>2</sup> The Commission views such a transaction as a contract for "selling any land or buildings" within the meaning of 2 U.S.C. 441c and 11 CFR 115.1(a)(1)(iii). Furthermore, given the apparent purpose behind 441c, the continuing relationship that exists between the lessor and lessee under such an arrangement supports the application of the statutory prohibition to a lease agreement.

In addition, the Commission notes that many modern leases contain explicit contractual provisions regarding such subjects as repair of the premises, the furnishing of heat and electricity, and other similar matters. In many cases, leases containing such provisions can be viewed as contracts for the rendition of personal services or for the furnishing of material, supplies, or equipment, and accordingly the Commission concludes that lessors who are parties to such leases would be covered by the statutory definition of "Federal contractor." 2 U.S.C. 441c(a)(1) and 11 CFR 115.1(a)(i) and (ii).

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  
Chairman for the  
Federal Election Commission

---

<sup>1</sup> The Commission notes that under 11 CFR 115.5, individuals or sole proprietors who are Federal contractors are prohibited from making contributions or expenditures from their business, personal, or other funds under their dominion or control.

<sup>2</sup> See Moynihan, C., Introduction to the Law of Real Property, pp. 69-71 (1962).