



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 11, 1985

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-60

W. Patrick Mulloy, II, Esq.
Henchey, Mulloy & Walz
500 Legal Arts Building
200 South Seventh Street
Louisville, KY 40202

Dear Mr. Mulloy:

This responds to your letter of November 16, 1984, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the sale of your interest in certain real estate for the purpose of retiring your campaign debts.

You state that you were an unsuccessful candidate for the U.S. House of Representatives in the Fourth District of Kentucky during the 1984 election cycle. You add that you have personal debts arising from funds you borrowed from commercial lending institutions and in turn loaned to your campaign.¹ You propose to retire these debts in two possible ways.

First, you state that you, your father, and your two brothers are general partners in a seven-year-old family partnership and that each of you owns a 25 percent interest. You add that this partnership owns several parcels of real estate as well as a mortgage on a parcel of real estate. You state that your desire is to sell to either an outside party or to one of your family members your 25 percent interest in one of the real estate parcels or the mortgage to raise funds to help retire your campaign debt. You add that although your 25 percent interest in the real estate or mortgage is owned by you individually, the Kentucky Uniform Partnership Act requires the written consent of the other partners for one partner to transfer his interest in a partnership asset. You state that the other three partners in your family partnership are willing to consent to a transfer of, your interest in a partnership asset to one of the other family members at an arms-length, fair market value price. Second, you state that there are several assets, including farm land, that you have owned individually for several years. You wish to sell one of these assets at an arms-length, fair market value price to a family member.

¹ Reports filed by your principal campaign committee with the Commission disclose outstanding debts for loans you obtained from commercial lending institutions totaling \$109,000 in principal.

You ask what application the Act may have to these proposed transactions.

Commission regulations explicitly permit a candidate for Federal office to make unlimited expenditures from his or her personal funds, including contributions to the candidate's principal campaign committee. 11 CFR 110.10(a). The regulations define personal funds to include "proceeds from the sale of the candidate's...investments." 11 CFR 110.10(b)(2). A candidate's family members, however, are subject to the same contribution limitations as other individuals. 2 U.S.C. 441a(a)(1)(A); 11 CFR 110.1(a); Advisory Opinions 1981-15, 1976-74, and 1976-26. These limitations also apply to contributions made to retire a campaign's or a candidate's debt resulting from elections held after December 31, 1974. 11 CFR 110.1(g)(2); Advisory Opinion 1979-1. Contributions from a partnership are attributable to both the partnership and the individual partners. 11 CFR 110.1(e); Advisory Opinion 1984-18. The Act and Commission regulations define contribution to include "any gift...of money or anything of value...made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A)(i); 11 CFR 100.7(a)(1).

Thus, a candidate's disposal of property to raise campaign funds implicates both the Act's limitations and its prohibitions regarding contributions. A contribution in the form of a gift of money would occur where (1) a candidate sells property for the purpose of using the proceeds to pay campaign expenses or debts and (2) the sale is for a price greater than the property's normal and usual market price.² Where a purchaser who pays an artificially inflated price for the property is an individual, the Act's limitations on contributions at 2 U.S.C. 441a(a)(1) would apply. This limitation would apply whether the individual is or is not a family member.³ Where such a purchaser is a corporation, bank, labor organization, foreign national, government contractor, or an agent for the real party in interest, the Act's prohibitions may apply. See 2 U.S.C. 441b, 441c, 441e, and 441f. No contribution in the form of a gift of money or of anything of value would occur, however, where a candidate sells property that he or she owned prior to becoming a candidate at the property's normal and usual market price regardless of whether or not the purchaser is a family member or prohibited from making a campaign contribution.⁴

These principles are reflected in earlier advisory opinions. In Advisory Opinion 1977-45, a prospective candidate intended to work for a publisher, who would pay him in advertising

² The regulations do not use the term "fair market value" but instead speak in terms of property's "usual and normal" charge or price in the market at the time. See 11 CFR 100.7(a)(1)(iii). The Commission views your use of the term "fair market value" in reference to your interests in various parcels of real estate to refer to the usual and normal price such parcel would bring in the market at the time you may sell the parcel. The Commission also notes that "fair market value" is commonly defined for valuation purposes as "the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of the relevant facts." Black's Law Dictionary 537 (5th ed. 1979).

³ Where the purchaser is a partnership, the purchase would be attributable to both the partnership and the individual partners for contribution limitation purposes. See Advisory Opinion 1984-18.

⁴ The Commission notes that the sale of property by a candidate to raise campaign funds is distinguishable from the sale of items by the campaign committee itself as a fundraising activity. See, e.g., Advisory Opinions 1983-2, 1982-24, and 1975-15.

credits, which the candidate would later use to pay for campaign advertising in the publisher's periodicals. The Commission concluded that no contribution would result if the payment for the candidate's services in credits was based on the going rate or fair market value of the work performed. In Advisory Opinion 1978-72, a candidate proposed to sell as part of his campaign philosophical tracts that he had written several years prior to becoming a candidate at a nominal price and to treat any excess he received as a contribution. The Commission concluded that if the price charged was the same that the requestor would have charged if he were not a candidate and the tracts did not solicit contributions or expressly advocate the requestor's candidacy, the receipts would not be contributions, but would instead be treated as the candidate's personal funds. See also Advisory Opinion 1978-48.

Accordingly, the Commission concludes that if you sell your property or your interest in a partnership asset at the usual and normal market price,⁵ whether to a family member, partner, or outside party, no contribution from the purchaser would result. Although the sale of a partnership asset requires the written consent of the other partners pursuant to Kentucky law, the Commission concludes that the giving of such consent itself would not be a contribution within the meaning of the Act. See Advisory Opinion 1978-52. Your principal campaign committee should keep supporting records regarding this transaction, including records relating to the method used to establish the property's usual and normal market price. See 11 CFR 102.9 and 104.14.

The Commission expresses no opinion as to the permissibility under Kentucky law of the proposed sale of your interest in one partnership asset. Nor does it express any opinion regarding any tax ramifications to your proposed transactions since such questions are outside the Commission's 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. 2 U.S.C. 437f.

Sincerely yours,

(signed)

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosures (AOs 1984-18, 1983-2, 1982-24, 1981-15, 1979-1, 1978-72, 1978-52, 1978-48, 1977-45, 1976-74, 1976-26 and 1975-15)

Commissioner Reiche voted against approval of this opinion. He will submit a dissent at a later date.

⁵ Although the Commission would view an appraisal by an expert using acceptable appraisal methods as prima facie evidence of the property's usual and normal market price, it does not rule out the use of other valuation methods that would reliably establish such price or value.