



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 4, 1985

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-28

Craig Wonderlich
Friends of Lane Evans
P.O. Box 1222
Rock Island, Illinois 61204-1222

Dear Mr. Wonderlich:

This responds to your letters of September 19 and August 29, 1985, which request an advisory opinion on behalf of the Friends of Lane Evans ("FLE") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to FLE's proposed acceptance of a rebate from Quad City Downs racetrack ("the Downs"), a corporation.

Your request and supplemental information state that FLE is planning a fundraising dinner at the Downs on October 11, 1985. The Downs does not require a written contract or deposit from your committee and would not require a written contract or deposit from any other organization holding a fundraiser at the Downs. Submitted with your request was a copy of the Downs "Fundraiser Plans". The plan sets the cost of the dinner at \$13.95 per person and the rebate at \$3.00 per person attending the event. The Downs will provide FLE with two-part dinner and admission tickets. The cost of the printing of the tickets is included in the dinner price. The "Fundraiser Plan" offers "comp" dinners for media; you state that FLE will not use this option. FLE has full responsibility for setting the price of the ticket, soliciting individuals, and receiving and accounting for the ticket purchases. Your solicitation materials for the event indicate that all funds received will be considered contributions to FLE, reviewed for compliance with the Act and regulations, and reported as contributions subject to the Act and regulations.

According to your request, FLE is required to pay for a minimum of 60 dinners. The payment for the dinners is to be made to the Downs after the third race. FLE proposes to accept a rebate from the Downs of \$3.00 for each person attending the dinner. You ask whether the acceptance of the rebate would be permitted under the Act and Commission regulations.

The Act prohibits a corporation from making a contribution or expenditure in connection with any Federal election. 2 U.S.C. 441b(a). The term "contribution or expenditure" is defined to include "any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value ... to any candidate, [or] campaign committee ... in connection with any [Federal] election ...". 2 U.S.C. 441b(b)(2) and 11 CFR 114.1(a)(1). The regulations at 11 CFR 100.7(a)(1)(iii) describing the term "anything of value" state that if goods or services are provided at less than the usual and normal charge, the difference between the usual and normal charge and the sale price would be a contribution from the seller. Since the Downs is a corporation, services provided to your committee at less than the usual and normal charge would result in a violation of the Act.

In past advisory opinions, the Commission has reviewed certain activities involving corporate vendors to determine whether the services provided by the corporation to a political committee resulted in a contribution in connection with a Federal election. See Advisory Opinions 1982-30, 1979-36, 1978-45. In its evaluation of the corporation's activity, the Commission focused on the charges made by the corporation. If the charges assessed by the corporation were the usual and normal charges offered to its non-political clientele in the corporation's ordinary course of business, a contribution would not result. 11 CFR 100.7(a)(1)(iii). Since the regulations prohibiting corporate contributions similarly include contributions of anything of value, the same standard of usual and normal charge would be applicable here. See 11 CFR 114.1(a)(1); see also 11 CFR 114.9(a), (b), and (d) which specifically incorporate 11 CFR 100.7(a)(1)(iii)(B).

Applying this regulatory standard, the rebate from the Downs would not constitute a contribution to FLE if the rebate process itself and the amount of the rebate, \$3.00 per person, were usual and normal practices offered by the Downs in its ordinary course of business to its non-political clientele. As the \$3.00 rebate is set by the Downs in its published Fundraiser Plans pamphlet which is apparently offered to all prospective fundraising organizations, FLE may accept the described rebate from the Downs.

The Downs rebate payment should be reported by FLE as an offset to operating expenditures on line 14, FEC Form 3. If it exceeds \$200, it must be itemized on Schedule A with a brief description of the circumstances in which it is paid. 2 U.S.C. 434(b)(3)(F), 11 CFR 104.3(a)(4)(v).

This response constitutes an advisory opinion concerning application of the Act and Commission regulations to the specific activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

John Warren McGarry
Chairman for the Federal Election Commission

Enclosures (AOs 1982-30, 1979-36, 1978-45)