



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 21, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-1

Robert B. Brauer
Special Counsel
Office of Representative Ronald V. Dellums
2136 Rayburn Building
Washington, D.C. 20515

Dear Mr. Brauer:

This responds to your letter of January 6, 1986, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed settlement of a disputed claim between a corporation and a political committee.

You state that the Committee to Re-Elect Congressman Ron Dellums ("the Committee") had requested the use of the Warner Theater of Washington, D.C., ("the Theater")¹ for the purpose of holding a fundraising concert on March 6, 1986, and that the Theater had held the date open to accommodate the Committee's request. You state that subsequent to the Committee's request, the Theater was contacted by the producers of the musical "The Tap Dance Kid," and was asked for a block of time that included the date requested by the Committee. You note that acceding to the request of the producers of the musical may be financially beneficial to the Theater.

You also state that the Theater contacted the Committee, as well as another party that had reserved a date during the block of time in question, and offered to mitigate the harm that might result from the Theater's inability to make its facility available on the dates sought.² You note that the Theater had, on a previous occasion, offered mitigation to another prospective customer

¹ According to information provided by Mr. L'Hommedieu to the Office of General Counsel at a meeting held on January 6, 1986, the Warner Theater is owned and operated by a stock corporation.

² You state that the artists scheduled by the Committee were only available on March 6, 1986.

in a similar situation. To mitigate any harm to the Committee, the Theater proposes to give the Committee, free of charge, one hundred tickets to the March 6, 1986 performance of "The Tap Dance Kid." Although final prices have not been set, you state that the approximate box office value of these tickets would be between \$2,400 and \$2,750. Finally, you state that neither the owners nor the management of the Theater know, contribute to, or otherwise support Representative Dellums, and for this reason you believe that the proposed arrangement is a normal business transaction.

Under 2 U.S.C. 441b, it is unlawful for any corporation to make a contribution of money or anything of value in connection with any Federal election. The Commission has previously suggested, however, that payments by a corporate vendor to a political committee for the purpose of settling a disputed claim between the vendor and the political committee might be permissible, assuming any such payment is made on a commercially reasonable basis and in the ordinary course of the corporation's business. See Advisory Opinion 1983-6.³ In light of the situation you present, the Commission concludes that the proposed offer of tickets would not be viewed as a prohibited corporate contribution to the committee, provided the offer is commercially reasonable and made in the ordinary course of the Theater's business.

In determining whether the Theater's offer is commercially reasonable, the Commission would consider as relevant such facts as whether the Committee attempted to find, or was offered, another comparable facility in which to hold its fundraiser, and whether the Theater's offer of mitigation is reasonable in light of the Committee's projected proceeds from the event (i.e., whether the Theater's offer is reasonably related to the Committee's lost revenue). Similarly, in determining whether the proposed transaction would be viewed as occurring in the ordinary course of the Theater's business, the Commission would consider whether the Theater has an established policy of making similar offers to other clients, both political and non-political, and whether the Theater in fact regularly makes such offers for the purpose of settling disputed claims with its customers.

If the proposed offer of free tickets satisfies the foregoing standard, which is based on prior Commission opinions presenting somewhat analogous situations, the acceptance of such tickets would not result in a violation of 2 U.S.C. 441b. The Committee should report the receipt of the tickets as a memo entry on Schedule A, and include a brief description of the reason for the receipt. See 11 CFR 104.3(a)(4)(vi); also see 11 CFR 104.3(b)(4)(i)(A).

³ The Commission has also stated that a corporate offer of complimentary hotel accommodations to a Federal candidate would not be presumed to be "in connection with" a Federal election, provided that the accommodations are offered by the hotel in the ordinary course of business to non-candidates as well as to candidates, and provided that the hotel could reasonably expect to derive commercial benefit from the offer. See the Commission's response to Advisory Opinion Request 1976-56. In another opinion, the Commission stated that a national television network could provide a Federal candidate with a free videotape copy of the candidate's appearance on the network's newscast, so long as the network has an established policy and practice of providing such a service to any member of the public appearing in a network newscast. Advisory Opinion 1978-60.

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

Sincerely yours,

(signed)

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures (AOs 1983-6, 1978-60, RE: AOR 1976-56)