



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

May 1, 1986

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-14

Honorable Dan Burton  
U.S. House of Representatives  
120 Cannon House Office Building  
Washington, D.C. 20515

Dear Mr. Burton:

This refers to your letter dated April 7, 1986, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") to the sale of a van by your principal campaign committee, the Dan Burton for Congress Committee ("the Committee). Your request was also supplemented by a letter dated April 14, 1986, from Curtis L. Coonrod, who is the treasurer of the Committee.

Your letters indicate that the Committee purchased a van during the 1982 campaign for Congress. You state that the van has been used for campaign travel and advertising. The van has now depreciated to such an extent that it is no longer suitable for campaign use. For this reason, the Committee wishes to offer the van for sale to the general public at its fair market value. You state that the offer would be made by placing classified advertisements in general circulation newspapers, and would not be made in connection with any political announcement or solicitation of contributions. You add that the transaction would be incidental to the campaign's existence, and is not proposed for the purpose of generating campaign revenues. Rather, the sale would be made for the purpose of reducing some of the expenses of the Committee.

You ask whether the Act permits the Committee to offer the van for sale to the general public at its fair market value and whether the proceeds of such a sale may be treated as "other receipts" of the Committee.

The question presented by your proposed sale is whether the amount paid to the Committee by the person who purchases the van is a contribution by that person for purposes of the Act and Commission regulations. If such a payment is a contribution, it would be subject to the contribution limits and prohibitions of the Act. See 2 U.S.C. 441a, 441b, 441c, 441e, 441f, 441g.

The term "contribution" is defined to include any gift, loan, advance or deposit of money made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. 431 (8)(A). In the specific context of contributions by corporations or labor organizations, the term "contribution" is also defined to include "any direct or indirect payment ... or gift of money ... to any candidate, campaign committee, or political party or organization, in connection with any election to" Federal office. 2 U.S.C. 441b(b)(2). A number of exemptions and exceptions are made to these definitions but none of them specifically address the type of sale/purchase transaction you propose. See generally 2 U.S.C. 431(8)(B), 441b(b)(2)(A)-(C).

In several past advisory opinions the Commission has considered a variety of factual situations where principal campaign committees and other political committees have proposed to sell, or otherwise use in a commercial-type venture, some form of committee asset. The Commission has stated in these opinions that business or commercial-type ventures of ongoing political committees are simply another form of fundraising for political purposes; therefore, the proceeds from such ventures were considered contributions subject to the Act. See Advisory Opinions 1983-2 and 1979-17. The Commission has also concluded that a contribution would result in cases where political committee assets such as political campaign fundraising items, or uniquely developed political campaign materials such as artwork, a voter opinion-survey poll, and media advertisements with candidate advocacy content, were proposed to be sold. See Advisory Opinions 1980-70, 1980-34, 1980-19 and 1979-76. See also Advisory opinion 1981-7 wherein a labor organization proposed to allow the use of its membership list in exchange for payments that would be deposited in its separate segregated political fund.

The Commission has, however, recognized two narrow exceptions to the general rule that the sale of political committee assets results in a contribution by the purchaser. Principal campaign committees with valuable campaign equipment and leftover campaign supplies that wished to terminate their operations and liquidate such assets for debt retirement purposes, or in contemplation of prompt dissolution of the committee after liquidation, have been permitted to do so. See Advisory Opinions 1985-1 and 1979-24. These opinions concluded that the cash proceeds would not be a contribution from the purchaser if no more than the "usual and normal charge," as defined in Commission regulations, was paid for the asset in question.

The other exception recognized by the Commission is where the asset was a political committee's mailing or contributor list which had a unique quality and was developed by the political committee in the normal course of its operations (and primarily for its own use), rather than as an item to be sold to others or for use in a campaign fundraising activity. Advisory Opinions 1982-41, 1981-53, 1981-46, and 1979-18. This line of opinions also reiterated the requirement that to avoid treatment as a contribution, the sale/purchase price paid to the political committee may not exceed the "usual and normal charge" as set forth in Commission regulations. 11 CFR 100.7(a)(1)(iii).

According to your request, the van was purchased during your 1982 campaign, and it has now "depreciated to the point that it is no longer suitable for campaign use." You propose to solicit purchase offers at the van's "fair market value" from the general public by placing classified ads in general circulation newspapers. You will not advertise the van in any political

announcement or any contribution solicitations. It is significant that the van is a depreciated asset, that it was acquired for and used by the Committee in two previous election cycles, and that it will be sold outright in a single isolated transaction of the Committee presumably without any expectation of Committee repurchase (or lease-back) at any time.

Accordingly, the Commission views this situation as materially distinguishable from the above-cited opinions where Political committees proposed to sell fundraising items or unique campaign materials, or to pursue commercial-type ventures producing revenue over an indefinite period that would be available for campaign expenditures. The situation presented is instead closer to the previous opinions where asset liquidation transactions by political committees have been allowed without a resulting contribution.

Based on the situation you have described, and the presumption that no repurchase or lease-back is involved, the Commission concludes that your proposed sale of the van at the usual and normal charge, and not in connection with any political announcement or solicitation of contributions, will not result in a contribution by the purchaser to the Committee. Of course, the purchase price received by the Committee may not exceed the usual and normal charge for the van in the market where it is sold. 11 CFR 100.7(a)(1)(iii). In this connection the Commission will presume that the price represents usual and normal charge if it conforms with generally recognized motor vehicle trade publications ("blue book") and takes into account the overall condition of the van, its accessories, mileage, and the date of sale. See Advisory Opinion 1985-1.

The sale proceeds should be reported by the Committee as "other receipts" with itemized information that identifies the purchaser as well as the amount and date of receipt. 2 U.S.C. 434(b)(3)(G), 11 CFR 104.3(a)(4)(vi). To further explain the receipt, the Committee may wish to add on its report a brief explanation that it represents the purchase price paid for the sale of the van.

This response constitutes an advisory opinion concerning application of the Act and Commission regulations to the specific transaction or activity 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 1985-1, 1983-2, 1982-41, 1981-53, 1981-46, 1981-7, 1980-70, 1980-34,  
1980-19, 1979-76, 1979-24, 1979-18, 1979-17)