



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

May 20, 1988

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-17

Paul E. Sullivan  
Wunder & Diefenderfer  
1615 L Street, N.W., Suite 650  
Washington, D.C. 20036

Dear Mr. Sullivan:

This responds to your letter of March 28, 1988, requesting an advisory opinion on behalf of Election Concepts, Inc. (ECI), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to ECI's projects for producing and marketing political medallions.

Your letter explains that ECI is a domestic corporation whose principal purpose is the production of commemorative medallions for political activities. ECI plans to produce a series of medallions in bronze, silver, or gold commemorating the 1988 presidential and congressional campaigns and the 1988 national nominating conventions of the two major political parties. Because each of ECI's proposals as you describe them raises distinctive issues, each proposal is discussed separately.

You state that ECI intends to contract with congressional candidates, presidential candidates, and major party presidential nominees for the sale and marketing of ECI's congressional or presidential medallions or major party presidential nominee medallions.<sup>1</sup> When each contract is signed, the campaign committee of each participating candidate or the compliance fund of each participating nominee will provide ECI with funds for the design and casting of the die. ECI will then, in turn, pay the mint for the artwork and the die.

Advertising brochures and other informational materials will instruct purchasers of the medallions (contributors)<sup>2</sup> (i) to make their checks payable to a participating candidate's primary campaign committee or to a nominee's compliance fund and (ii) to send their order forms and checks to the committee or fund. These committees or compliance funds will bear all the costs

for advertising and other marketing schemes and for production of the medallions. The "spot market" price for gold and silver will determine the price the political organizations pay for precious metals. (The mint's price for the bronze medallion will be a pre-established and constant price.) ECI will charge the organizations a fee for the work it does on their behalf. Under ECI's proposals, therefore, ECI will absorb no part of the costs involved in the production and marketing of the medallions, nor will it pay any amount to the candidates, the nominees, or to their committees or compliance funds.

Your request explains that these features contrast sharply with those of the unlawful Franklin Mint projects described in MUR 1166/1180 (closed in 1982). Franklin Mint, at its own expense, produced and marketed major party national ticket medals. In return for use of Republican and Democratic party symbols and the "right" to designate the medals as "official" medals of the respective parties, the corporation agreed to pay the national committee of each major party royalties of 15% of the net sales with a minimum guaranteed royalty of \$30,000. Each national committee was also to receive at no charge a quantity of medals with a retail value of \$5,000.

The Commission concluded that Franklin Mint had made prohibited contributions and expenditures, 2 U.S.C. 441b(a), to the Republican National Committee and the Democratic National Committee. As in Advisory Opinion 1979-17, party political organizations had sold their good will and the reputation of their national leadership to a corporation in exchange for a share of the income realized or anticipated. The payments made by the corporation, in these circumstances, could not be viewed as bargained-for consideration. Franklin Mint's conduct also fell within the strictures of Advisory Opinion 1976-50, where the corporation improperly agreed to pay all expenses in producing and marketing a shirt bearing a candidate's name and to remit \$1 of the purchase price as a political contribution by the purchaser to the candidate's campaign.

ECI's plans are more nearly analogous to those set out in Advisory Opinion 1982-24. There, artists agreed to let a candidate's committee show their artwork on consignment for sale at a fundraiser. The artists were to receive their normal price for any of their work sold, and the committee would return unsold work to them. The candidate's committee would retain the difference between the artists' normal asking price and the elevated price to be charged at the fundraiser. Although the entire amount each purchaser paid would be a contribution under the Act, the artists were not treated as making a contribution.

On the assumption that usual and normal charges are involved and that the ordinary course of business practices is followed by ECI and the other vendors, ECI's proposals for the pre-general election sale and marketing of various medallions to Federal office candidates and major party presidential nominees are permitted under the Act, including 2 U.S.C. 441b(a), which prohibits any "contribution or expenditure" by a corporation in connection with a Federal election. See 2 U.S.C. 431(8); 11 CFR 100.7.

Your letter indicates that ECI also hopes to sell its medallions, at fair market prices, to federally regulated political action committees (PACs), including separate segregated funds and non-connected committees. The committees, in turn, will provide the medallions as gifts or souvenirs to their contributors. ECI will pay the costs of marketing the medallions to the PACs.

ECI's proposal, as you explain it, appears to be an effort by a corporation to develop profit-making, arm's-length commercial transactions in which the corporation offers to sell products that may be useful to political organizations.<sup>3</sup> The Act does not preclude such a commercial venture provided the purchase price represents the usual and normal charge. 11 CFR 100.7(a)(1)(iii). In reaching this conclusion, the Commission assumes that ECI's marketing activity to PACs will be conducted on a strictly commercial basis and that ECI will not seek to influence, affirmatively or negatively, the nomination or election of any candidate to Federal office.

You have provided very limited information about ECI's plans for offering the convention medallions<sup>4</sup> at the Republican and Democratic conventions and through direct marketing catalogues. Thus, the Commission does not address the legal ramifications of these plans. Your description, for example, fails to state unambiguously (i) whether any of the medallions will be given as gifts or whether all would be for sale only, (ii) whether any Democratic or Republican national committees as well as host committees will be parties to contracts with ECI, and (iii) whether ECI and the entities with which it contracts will share expenses and profits. The Commission, therefore, only refers ECI to the requirements of 11 CFR Part 9008, especially to those of section 9008.7.

ECI's final proposal, according to your letter, is to produce at its own expense the various medallions and to market and sell them to the general public, particularly to collectors specializing in political memorabilia. You state that ECI will undertake this program only (i) after a 1988 Federal candidate's election and debt retirement or (ii) after a 1988 Federal candidate's loss or withdrawal and his or her debt retirement. (ECI will apparently retain these proprietary rights.) So long as ECI pursues this venture on a commercial basis for the purpose of making a profit, the plan is not prohibited by the Act. See Advisory Opinions 1982-66, 1982-30, and 1978-72.

You suggest that ECI may produce, market, and sell the medallions in joint ventures with the individuals who sought Federal office in the 1988 elections. If the individuals are not candidates for Federal office, and if they do not have outstanding debts from any Federal election campaign, the Act raises no obstacle to the joint ventures. Cf. Advisory Opinion 1975-15 (A candidate may contract to receive royalties from the use of his or her minted likeness without violating the Act; George Wallace entered into a 10-year contract in 1975, renewable for an additional 5 years, with his campaign committee).

The Commission cautions ECI, however, that ECI's "joint venture" contracts with officeholders (or others) who become candidates for reelection (or election) to Federal office may, depending on the facts and circumstances, implicate the Act and Commission regulations. For example, in Advisory Opinion 1977-4, the Franklin Mint wished to donate special medals labeled "Congressman's Medal of Merit (or Valor) presented by Congressman Richard T. Schulze." The opinion advised the Congressman that "if you are not a candidate for Federal office, and if the medals are neither intended for use nor actually used in connection with any Federal election campaign, the donation to you by the Franklin Mint of 250 medals for the purposes described would not violate the Act." The same guidelines apply to ECI's proposal.

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

Sincerely yours,

(signed)

Thomas J. Josefiak  
Chairman of the Federal Election Commission

Enclosures (AOs 1982-66, 1982-30, 1982-24, 1979-17, 1978-72, 1977-4, 1976-50, and 1975-15)

1/ The face of each of ECI's congressional candidate and presidential candidate medallions will have a bust of the candidate, the candidate's name, and the legend "1988 Congressional Candidate" or "1988 Presidential Candidate." The tail side will include a relevant political scene, such as the candidate's home state, or the logo of the candidate's political party. The face of the major party presidential nominee medallion will show the nominee and will include a legend identifying the individual as the Republican or Democratic Party's 1988 nominee. The tail side will reflect a convention setting or the convention city.

2/ See 2 U.S.C. 431(8)(A)(i) and 11 CFR 100.7(a)(1) and 100.7(a)(2). The order forms for the medallions will request the contributor information required by the Act and Commission regulations. The forms and brochures will also clearly inform prospective purchasers that the full purchase price will, under the Act, be considered a contribution and that the Act's limitations and prohibitions govern the contributions-purchases.

3/ For guidelines on political fundraising, see, e.g., 2 U.S.C. 441a and 441b; 11 CFR 100.7(a)(2) and 114.5. Cf. Advisory Opinion 1981-40 ("A corporation or labor organization may offer prizes as part of a fundraising device provided that the prizes offered are not disproportionately valuable in relation to the contributions generated"). Corporations or labor organizations that purchase the medallions for use in fundraising on behalf of their separate segregated funds are subject to the cited Commission regulations, including 11 CFR 114.5(b)(2).

4/ The front side of the convention medallions will show the 1988 Republican convention city or the 1988 Democratic convention city, with identifying statements, for example, "Home of the 1988 Democratic National Convention." The tail side will probably bear the logo for the political party's convention. The convention medallions will include no reference to specific candidates or nominees.