



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

August 18, 1989

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1989-14

Anthony Athanas  
President  
Anthony's Pier 4 Restaurant, Inc.  
140 Northern Avenue  
Boston, Massachusetts 02210

Dear Mr. Athanas:

This responds to your letter dated July 11, 1989, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to fees charged by your company for the provision of catering services for Federal candidates.

You state that you are the President of Anthony's Pier 4 Restaurant, Inc. You state that a variety of receptions are hosted at your restaurant, including fundraisers, and that during the past several years, the restaurant has become a frequent location for political fundraisers, including those for Federal candidates. Aside from an occasional discount for charity, the restaurant charges for receptions in one of two ways. The first way of charging is on a "flat fee" basis which involves a billing at \$19.95 per person. It is favored by entities who have an accurate head count and wish to provide "what amounts to a meal." The second way of charging is a "cost plus" basis. This involves an open bar and the provision of a more limited menu than that offered on the flat fee basis. It also involves the use of fewer employees. The billing is based on multiplying the actual costs of purchasing the food items used by 3.5 and the actual costs of the liquor consumed by 4.5. This option is available to "stand-up" groups who are willing to have their receptions immediately before the dinner hour.

You state that, because the "cost plus" basis is usually less expensive, many, but not all, political fundraisers choose this option. This option is chosen by numerous other customers, including the Chamber of Commerce and other civic associations. You state that it is available to political and non-political customers on an equal basis, provided the customer is willing to accept the limited menu and off-hours accompanying this option. You also note that because of the lower

presentation costs and because of the dinner business generated, the "cost plus" option leads to a higher profit for the restaurant than the flat fee option.

You ask whether the restaurant may charge Federal candidates and/or their political committees on a cost plus basis for fundraising receptions without a resulting corporate contribution.

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, campaign committee, or political party or organization, in connection with any [Federal] election...." 2 U.S.C. 441b(b)(2); 11 CFR 114.1(a)(1). Commission regulations 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 amount actually charged the political committee would constitute an in-kind contribution from the seller. 11 CFR 100.7(a)(1)(iii).

In past advisory opinions addressing the sale of goods or services to Federal candidates or political committees by corporate vendors, the Commission has 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 customers in the corporation's ordinary course of business, a contribution would not result. Advisory Opinions 1987-24, 1986-22, 1985-28, and 1982-30. Compare Advisory Opinion 1978-45. In the situation you present, you offer the cost plus option to political candidates and committees at the same price and on the same basis as offered to non-political customers. This method of charging is a usual and normal practice of the restaurant. The Commission concludes, therefore, that a corporate contribution does not result from charging Federal candidates and political committees on a cost plus basis for campaign fundraisers.<sup>1</sup>

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. See 2 U.S.C. 437f.

Sincerely,

(signed)

Danny L. McDonald  
Chairman for the Federal Election Commission

Enclosures (AOs 1987-24, 1986-22, 1985-28, 1982-30, and 1978-45)

1/ Although the issue is not expressly raised in your request, the Commission notes that the Act and Commission regulations permit the sale of food and beverages to the political committee of a candidate at a charge less than the "normal or comparable commercial rate" without a resulting contribution, provided that the charge is at least equal to the cost of such food and beverages to the vendor and provided that the aggregate value of the discount, i.e., the difference between the

charge and the normal or comparable commercial rate, does not exceed \$1,000 with respect to any single election. 2 U.S.C. 431(8)(B)(iii); 11 CFR 100.7(b)(7) and 114.1(a)(2)(v).