

ADVISORY OPINION 1990-1: CONCURRING OPINION

Commissioner Thomas J. Josefiak

I basically agree with the analysis and result of Advisory Opinion 1990-1, consistent with the approach I advocated in my dissent in Advisory Opinion 1988-28 ("Teleline").

The most significant distinction between these facts and those presented in the prior opinion would seem to be the precaution of having participating political committees pay a deposit that will be "sufficient to cover all the costs associated with the 900 line program and adequate to cover any losses," and that, if a program appears to be a "complete failure," the enterprise will be terminated before losses exceed the initial deposit. The opinion also notes participating committees are "solely liable for the costs of the program." The Commission concludes that this arrangement is thereby consistent with Advisory Opinion 1979-36, and avoids a violation of §441b of the Act that would result from an impermissible corporate contribution to such committees.

While requiring a deposit may satisfy a strict interpretation of §441b, I continue to believe it is not demanded by the analysis in Advisory Opinion 1979-36 regarding vendors of fundraising services. That opinion distinguished the conventional view of vendors, usually considered to have made a contribution to a client committee if they front or advance costs, from the unique category of vendors engaged in providing fundraising services. In that opinion, the Commission recognized that a vendor of fundraising services would not be making a contribution to a political committee by absorbing the initial costs of a mail solicitation program, to be recouped from receipts from the effort, where such an arrangement was both the normal industry practice generally and within the specific vendor's ordinary course of business. This conclusion was reached even though the committee had only "limited liability" towards payment for the goods and services provided and the vendor assumed some risk of not recouping all costs fronted to the committee. The agreement in that case did provide for safeguards to prevent overextension of credit.

The Commission now acknowledges these customer-paid telephone services constitute fundraising. In permitting such activity by political committees under the FECA, we place fairly burdensome, but necessary, bookkeeping requirements upon providers of the fundraising services. In my view, we need not have exaggerated the significance of minimal and temporary advances accruing to client committees in implementing these programs, as long as the activity was undertaken for a genuine commercial purpose and conformed with standard business practices.

March 7, 1990

