



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

March 13, 1990

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1990-3

Jonathan A. Hattenbach  
Legal Counsel  
City Political Action Committee  
1501 N. Bell Ave.  
Chicago, IL 60622

Dear Mr. Hattenbach:

This responds to your letter dated January 28, 1990, requesting an advisory opinion on behalf of the City Political Action Committee ("CityPAC") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the sale of advertisements to run in its newsletter.

You state that CityPAC is a nonconnected political committee registered with the Commission. You state that CityPAC has approximately 600 member/contributors and, during the 1988 election cycle, contributed about \$35,000 to Congressional candidates. CityPAC publishes a quarterly newsletter in order to communicate with its "members" about its activities and "to help recruit new members." The average circulation of the newsletter is 1600 copies.

You state that CityPAC wishes to sell space for advertisements to run in its newsletter with the funds obtained to be used solely to defray the expenses of printing and distributing the newsletter. CityPAC intends to charge fair market value for such space which you believe would approximate \$150 to \$200 for a 3-inch by 5-inch advertisement. CityPAC expects to sell up to 20 such advertisements, yielding revenues of no more than \$4,000. In addition, the committee expects to sell space to at least several entities, so that no individual advertiser will be more than an "insignificant source of revenues" for the newsletter. You also state that no advertiser would have any role or vote in determining the contributions to be made by CityPAC except to the extent that the advertiser is otherwise a contributor to the committee, and that no advertiser/contributor would be entitled to an additional vote or role based upon its advertising.

You ask whether CityPAC may accept advertisements from individuals or partnerships that are permitted to contribute to the committee, to the extent a fair market value is charged for such ads; whether the payments collected from the individuals and partnerships are to be reported as contributions; and whether advertisements may be accepted on the same basis from corporations.

Under the Act and Commission regulations, it is unlawful for a corporation to make a contribution in connection with any Federal election. 2 U.S.C. 441b(a); 11 CFR 114.2(b). In the case of permissible sources of contributions such as individuals and partnerships, the Act places a limit of \$5,000 in a calendar year to committees that are not authorized by a candidate or not established and maintained by a national political party. 2 U.S.C. 441a(a)(1)(C); 11 CFR 110.1(d)(1).

In past advisory opinions, the Commission has considered a variety of situations where political committees have proposed to sell, or otherwise use in a business or commercial venture, committee assets or items. The Commission has generally viewed such ventures as fundraising for political purposes, resulting in contributions in the full amount paid. See Advisory Opinions 1988-12, 1983-2, 1981-7, and 1979-76. Compare Advisory Opinion 1989-4. Such contributions result regardless of whether "fair market value" is paid. Advisory Opinion 1979-76. In addition, the Commission has specifically considered payments for advertisements in newsletters and journals published by political organizations to be contributions. See Advisory Opinions 1985-39, 1981-33, 1981-3, and 1978-46. The Commission made these conclusions on the basis that the activity being funded by the payments would be "in connection with" or "for the purpose of influencing" a Federal election or, in the case of a national bank or a corporation organized under the authority of a law of Congress, in connection with any election. See 2 U.S.C. 431(8)(A)(i) and 441b(b)(2); CFR 100.7(a)(1) and 114.1(a)(1).

The payments received by CityPAC for advertising space will enter the account of a political committee that supports Federal candidates and will be available for the use of the committee. In addition, no exception in the Act or regulations allows these funds to be treated as miscellaneous or other receipts, e.g., fund transfers between authorized committees of the same candidate, bank loans made under specified conditions, rebates, refunds, other offsets to operating expenditures, dividends, interest, or other forms of receipts. Advisory Opinion 1983-2. 2 U.S.C. 434(b)(2); 11 CFR 104.3(a)(3). The Commission concludes, therefore, that the payments for advertising space will be contributions in their full amount.<sup>1/</sup>

Based on the foregoing, CityPAC may receive funds from individuals and partnerships to pay for advertising space. Such payments are contributions reportable under the Act and subject to the limit of 2 U.S.C. 441a(a)(1)(C). Contributions from partnerships are attributable both to the partnership and to each partner in direct proportion to his or her share of the partnership profits or by agreement of the partners.<sup>2/</sup> 11 CFR 110.1(e). Payments from corporations for advertising space are prohibited, although the separate segregated fund of a corporation may make contributions for advertising in the newsletter. See 11 CFR 114.5(e)(3), (f). An individual may pay for an advertisement on behalf of a corporation up to the statutory limit, however, provided that the payment is made with the individual's funds from his or her own noncorporate account, and provided that the individual is not paid by the corporation for the contribution by means of a

bonus, expense account, or other form of direct or indirect compensation. 11 CFR 114.5(b)(1); Advisory Opinion 1985-39.<sup>3/</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)

Lee Ann Elliott  
Chairman for the Federal Election Commission

Enclosures (AOs 1989-4, 1988-12, 1985-39, 1983-2, 1981-33, 1981-7, 1981-3, 1979-76, and 1978-46)

1/ It makes no difference to this analysis that CityPAC calls its contributors "members." Such a designation does not make CityPAC a membership organization under the Act. In addition, CityPAC intends to communicate well beyond the group it calls its members.

2/ Partnerships that are Federal contractors may not use partnership assets to make any contribution in connection with Federal elections. 11 CFR 115.4(a).

3/ If an advertisement includes a message expressly advocating the election or defeat of a Federal candidate, it must contain a disclaimer in accordance with 2 U.S.C. 441d(a) and 11 CFR 110.11(a)(1).