



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 3, 1990

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1990-12

Sean Strub
Strub for Congress
20 South Main Street
New City, NY 10956

Dear Mr. Strub:

This responds to your letters dated May 25 and June 25, 1990, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use by a volunteer for your campaign of results from a poll commissioned by him when he was planning to run for Congress.

You are a candidate for the Democratic nomination for the House seat from New York's 22nd Congressional District. Originally, David Hochberg, who was going to run for that seat, had commissioned a survey paid for by his personal funds. He subsequently decided not to run, and you decided to run instead.¹ Mr. Hochberg has offered to assist your campaign as a part-time volunteer, in which capacity he proposes to help to set up interviews with the media and solicit individuals for contributions to your campaign.

The survey results contain information concerning demographics, public opinion, and name recognition of elected officials in the 22nd District that Mr. Hochberg could utilize in his volunteer efforts or disclose to you. You are concerned that "[t]o some extent, information found in the survey could apply to [your] campaign strategy and tactics." Mr. Hochberg received the results of the poll on May 22 but has neither informed you of nor shown you any results.

You state that your campaign has very little money and that it is unlikely that the campaign can pay for the poll until autumn. You ask what effect Mr. Hochberg's access to the survey information has on his involvement as a campaign volunteer. You also ask if the situation presented involves any other issues.

Under the Act and Commission regulations, the term contribution does not include the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee. 2 U.S.C. 431(8)(B)(i); 11 CFR 100.7(b)(3). The situation presented by you involves volunteer services to your committee by a person who has received poll results that are pertinent to the operations of your campaign.

Commission regulations address the making and acceptance of contributions in the form of poll results. The purchase of opinion poll results by a political committee or other person not authorized by a candidate to make expenditures and the subsequent acceptance of the poll results by a candidate or a candidate's authorized committee or agent is a contribution in-kind by the purchaser to the candidate and an expenditure by the candidate. 11 CFR 106.4(b). Poll results are considered to be accepted by a candidate if the candidate or candidate's authorized political committee or agent (1) requested the poll results before their receipt; (2) uses the poll results; or (3) does not notify the contributor that the results are refused. 11 CFR 106.4(b)(1), (2), and (3).

Mr. Hochberg commissioned this poll for his own potential candidacy and not on behalf of your campaign. Although Mr. Hochberg obviously will have knowledge of the polling information while he pursues his volunteer activities, Mr. Hochberg entered into the transaction with the pollster prior to working for your campaign and not in contemplation of working for your campaign. His receipt of the results was a completion of that transaction, rather than a receipt on behalf of your campaign. In such circumstances, Mr. Hochberg's knowledge of the poll results by itself is not treated as a contribution of the poll and will not preclude his unpaid volunteer services to the campaign.

If, however, Mr. Hochberg imparts poll result information to you or anyone else working for your campaign, including any data or any analysis of the results, or if he uses the poll information to advise your campaign on matters such as campaign strategy or creating media messages, such poll information will constitute an in-kind contribution from Mr. Hochberg to your campaign, and an expenditure in an equal amount by your committee. 11 CFR 106.4(b). See also 11 CFR 104.13(a) and (b). The amount of such a contribution will be determined by calculating the share of the overall cost of the poll allocable to that particular information. Cf. 11 CFR 106.4(e). A determination as to the overall cost of the poll in its entirety will be premised upon the decreasing valuations presented in 11 CFR 106.4(g).^{2/}

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)

John Warren McGarry
Vice Chairman for the Federal Election Commission

1/ Mr. Strub's Statement of Candidacy and the Statement of Organization for Strub for Congress were received by the Clerk of the House on June 25, 1990. No Statement of Candidacy or Statement of Organization was ever received for Mr. Hochberg.

2/ That subsection provides that the amount of a contribution and expenditure by a candidate or committee receiving poll results would be 50 percent of the original amount if received during a period 16 to 60 days after the initial receipt, five percent of the original amount during a period 61 to 180 days after the initial receipt, and zero during the period after 180 days.