April 12, 1991

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-10

Andrew M. Hochberg, P.C.
184 North Street
Suite 225
Pittsfield, MA 01201

Dear Mr. Hochberg:

This responds to your letters dated March 15, 1991, and March 21, 1991, requesting an advisory opinion on behalf of Citizens for Sherwood Guernsey ("the Guernsey Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use by a campaign of assets jointly owned by the candidate and his spouse. The Guernsey Committee is the principal campaign committee of Sherwood Guernsey who is a candidate in the special election in the First District of Massachusetts, scheduled for April 30, 1991.

Mr. Guernsey seeks to obtain a bank loan for his campaign no greater than $110,000, using as collateral his marital home which is jointly held with his spouse, Carol C. Guernsey, as tenants by the entirety. You state that the present tax assessed value of the home, "upon which the bank will base its valuation of the home," is $249,000.[1] You state that the total equity in the home calculated as the tax valuation less the outstanding amount of the mortgage [approximately $20,000] is approximately $230,000. You state that Mrs. Guernsey's signature is required to enable the candidate to use jointly owned assets as collateral and ask whether such co-signature would make her a contributor under the circumstances presented.

The candidate also seeks to withdraw 50 percent of the value of assets in a Kidder, Peabody Investor Account, which is held by Mr. and Mrs. Guernsey as joint tenants with right of survivorship. The account is valued at approximately $68,000 with approximately half the value in cash and money market funds and half in liquid equities. Specifically, the candidate wants to withdraw cash in an amount less than or equal to half of the account's value without liquidating the equities. You state that the signature of each spouse is required to withdraw funds from the account, unless Kidder-Peabody receives written authorization from the non-signing spouse that funds may be disbursed in the name of only one spouse. You also inform us that the rights of each spouse do not vary depending upon the instrument or equity in the account and that each

spouse has equal rights to the assets in the account. You ask whether the proposed withdrawal would cause Mrs. Guernsey to be a contributor.

An individual, other than the candidate, is limited to contributions aggregating $1,000 per election to a Federal candidate and his authorized political committees. 2 U.S.C. 441a(a)(1)(A). This limitation applies to the spouse or family member of a candidate, as well as to other individuals. According to Commission regulations, the candidate may make unlimited expenditures from personal funds. 11 CFR 110.10(a). Personal funds of a candidate are defined, in part, as:

(1) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:
    (i) Legal and rightful title, or
    (ii) An equitable interest. 11 CFR 110.10(b).

Commission regulations, however, also permit the candidate to use the value of his or her share of assets jointly owned with the spouse for campaign purposes, without making the spouse a contributor. According to 11 CFR 110.10(b)(3),

> [a] candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate.

You state the candidate's concern that Mrs. Guernsey's signature on the bank loan instruments will cause her to be a contributor of an excessive amount to the campaign. The Act and Commission regulations provide that a loan is a contribution and that, as a general rule, a bank loan is a contribution by each endorser or guarantor. 2 U.S.C. 431(8)(A)(i) and (vii)(I); 11 CFR 100.7(a)(1) and 100.7(a)(1)(i)(C). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount for which he or she agreed to be liable and, in the absence of a stipulation of a portion, the loan shall be considered a loan by each endorser or guarantor in the same proportion to the unpaid balance that he or she bears to the total number of guarantors. 11 CFR 100.7(a)(1)(i)(C).

Although the Commission normally considers a guarantor of a loan as making a contribution subject to the section 441a limits, its regulations allow for a spouse of a candidate to co-sign a loan and not be a contributor under certain circumstances. According to 11 CFR 100.7(a)(1)(i)(D), [a] candidate may obtain a loan on which his or her spouse's signature is required when jointly owned assets are used as collateral or security for the loan. The spouse shall not be considered a contributor to the candidate's campaign if the value of the candidate's share of the property used as collateral equals or exceeds the amount of the loan which is used for the candidate's campaign.

As a joint owner of the home with his wife, Mr. Guernsey may consider half of the equity jointly held by them in the home as his personal funds. Since this amount, approximately $115,000, exceeds the amount of the loan for the campaign, Mrs. Guernsey may co-sign on the loan without becoming a contributor.

Mr. Guernsey also wishes to withdraw cash from an investment account jointly held with his wife in an amount that comprises less than half the value of the account. Regardless of the fact that the candidate seeks to make his withdrawal from one type of asset in the account, your description indicates that the account itself can be construed as one jointly held asset. You have informed us that withdrawals from the account require the signatures of both spouses. Therefore, it appears that the candidate does not have legal right of access to or control over the account, without the benefit of a spousal signature. As stated above, however, the Commission has drawn an exception, at 11 CFR 110.10(b)(3), for the use of assets jointly owned with a spouse. As a joint tenant with his wife, Mr. Guernsey may use up to one-half of the account for his campaign and therefore may make the proposed withdrawal. The Commission assumes that these assets are not otherwise encumbered and expresses no opinion as to the consequences of such encumbrance.

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.

Sincerely,

(signed)

John Warren McGarry
Chairman for the Federal Election Commission

Enclosure (AO 1984-60)

1/ Based upon your statement as to the bank's use of the present tax assessed value for valuation purposes, the Commission assumes, for the purposes of this opinion, that the tax assessed value is not greater than the fair market value of the home. The Commission also assumes that such a basis for valuation is in the bank's ordinary course of business. See 2 U.S.C. 431(8)(B)(vii). See also Advisory Opinion 1984-60, footnotes 2 and 5 (where the Commission equates the concepts of fair market value and usual and normal charge and states that it "would view an appraisal by an expert using acceptable appraisal methods as prima facie evidence of the property's usual and normal market price," without ruling out other reliable valuation methods). Note also that other conditions apply to bank loans obtained for campaign purposes. 11 CFR 100.7(b)(11).