



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 6, 1991

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-34

Trent R. Benzo
Acting Executive Director
West Virginia Republican State Committee
P.O. Box A
Charleston, WV 25362

Dear Mr. Benzo:

This responds to your letter of September 6, 1991, as supplemented by your letter dated October 16, 1991, requesting an advisory opinion on behalf of the West Virginia Republican State Committee ("the Committee") concerning the application of the Federal Election Campaign of 1971, as amended ("the Act"), to the sale by the Committee of access to a data base of registered voters in West Virginia.

You state that the Committee, using funds from its Federal account, has recently purchased a computer system and leased a data base. The data base, which you describe as "extremely valuable," consists of all registered voters in West Virginia. According to the information you have provided, it was leased from Aristotle Industries for \$5,000 with updates provided at least once a year.¹ The data base, you state, is to be part of the Committee's direct mail program, both for fundraising and candidate support. While the computer system has been used to keep track of fundraising and other matters, you state that, once the political campaigns are in "full swing" next year, the primary use of the system will be for running the data base itself.

During the interim period before the political campaigns reach intensity or, as you describe it, "the off-year," the Committee wishes to sub-lease the data base to individuals, PACs, corporations and other groups. Because of a clause in the Committee's contract with Aristotle Industries, the Committee is unable to provide an electronically formatted copy of the data base. However, the Committee plans to supply customers with lists, letters, labels and addressed envelopes. The cost the Committee intends to charge is a maximum of \$5,000 for statewide use and a lesser amount for smaller areas. You state that this charge represents the Committee's costs

to lease the data base for one year. You state that this fee schedule is justified both by the expense to prepare and package the information in the above manner, and by the small demand for the information that exists at this time.

You state that, while the Committee does not anticipate a profit from these transactions, the income generated would be used as an offset to operating expenditures. These funds would be used only in conjunction with the computer system and data base. You state that you would primarily use the money to pay salaries of the people running the system. The Committee offers to open a separate Federal account for these purposes and you affirm that no candidate, Federal or non-Federal, would benefit from this account.²

Generally, the Commission has viewed the sale or commercial use of committee assets by a political committee to be fundraising for political purposes, resulting in contributions subject to the limitations and prohibitions of the Act. See Advisory Opinions 1990-3, 1989-4, 1988-12 and 1983-2. The Commission has reached this conclusion with respect to the proposed sale of campaign fundraising items, or unique political campaign materials without a genuinely independent market value. See Advisory Opinions 1990-3 and 1980-70. The Commission has further reviewed situations where a committee seeks to use its assets to generate income through ongoing business or commercial ventures. The Commission has found these to be merely fundraising in another form. See Advisory Opinions 1990-3, 1988-12 and 1983-2.

In certain circumstances, the Commission has concluded that contributions do not result. The Commission has specifically permitted isolated sales of political committee assets without inherent contribution consequences, however, when the assets had been purchased or developed for the committee's own particular use, rather than for sale in a campaign fundraising activity, and such assets had ascertainable market value. Advisory Opinions 1989-4 (mailing lists and computer hardware), 1986-14 (campaign van), 1981-53 (mailing list) and 1979-24 (yard sign material and office equipment). The above has been allowed in isolated sales of political committee assets including where termination of the committee has not been contemplated. Advisory Opinions 1990-26 and 1985-1.³

The Commission notes that your transaction differs from the above factual patterns. Your request instead presents a situation similar, in certain respects, to that considered by the Commission in Advisory Opinion 1983-2. In that opinion, following purchase of computer equipment, the Citizens for Emery Committee wished to provide use of the computer on a "fee for services basis" to state committees, political candidates and private businesses. The funds realized from these continuing transactions were to be used to pay remaining committee debt. The Commission concluded that this enterprise would be fundraising and that all the funds generated would be contributions under the Act. In the same way, rather than an isolated sale or disposal of a committee asset, the Committee proposes to engage in an ongoing enterprise involving the use of a mailing list and computer equipment in order to generate funds to maintain the computer system during the non-election year. Therefore, under the facts presented in your request and in accordance with Commission precedent, the Commission concludes that the Committee's sale of access to its registered voters data base, and the printing of letters, labels, addressed envelopes, and lists using that data base, would be fundraising. Funds generated by the transaction would be considered contributions under the Act unless they were deposited in a separate non-Federal

account and used only for purposes other than influencing any Federal election or the payment of the Federal share of administrative and fundraising costs. See 11 CFR 102.5(a)(1) and Advisory Opinion 1986-40.

In this regard, the Commission notes your statement that the Committee intends to market the list to corporations. The Act prohibits the acceptance by political committees of contributions made from corporate treasuries. 2 U.S.C. 441b. While the transaction you wish to engage in is not prohibited by the Act or Commission regulations, the funds received from the "purchasers" must be treated as contributions for the purposes of the Act and regulations. This means that the prohibitions, limitations, and disclosure requirements of the Act apply to the funds raised to same extent as if the Committee was engaging in another form of political fundraising. Therefore, the Commission cautions you that the receipt of funds from corporations in relation to your proposed transaction would be prohibited under the Act unless, again, the funds were placed in a separate non-Federal account with the use restricted as described above. See Advisory Opinions 1990-3, 1988-12 and 1983-2.

The Commission expresses no opinion as to the possible application of West Virginia state law to the described activity, nor as to any tax ramifications, since those issues are outside its jurisdiction.

This response constitutes an advisory opinion concerning the 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
Chairman for the Federal Election Commission

Enclosures (AOs 1990-26, 1990-3, 1989-4, 1988-12, 1986-14, 1986-40, 1985-1, 1983-2, 1981-53, 1980-70 and 1979-24)

1/ According to the Political Resource Directory, National Edition (1991), Aristotle Industries is a company specializing in campaign software voter lists, diskettes and campaign seminars.

2/ You indicate that funds from the account would also be used to buy supplies such as labels, stationary, envelopes, upgrading the system, laser-jet printer cartridges, as well as any other costs associated with the operation of the system.

3/ The various advisory opinions dealing with contributor lists have followed these same general principles. For example, in Advisory Opinion 1981-53, the Bill Frazier for Congress committee wished to sell a contributor list to a data processing corporation. The list was created by the committee itself and included all of its contributors. Further, the transaction was a final sale in which the committee retained no copy of the list. In another situation, Advisory Opinion 1988-

12, the Commission concluded that proposed ongoing transactions by the Erie County [New York] Democratic committee to sell access to a list of all county registered Democrats to a savings bank for use in the bank's credit card program, which would generate income for the committee's administrative expenses, was fundraising activity under the Act.