



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 15, 1992

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-12

Martin L. Peterson
Campaign Manager
LaRocco for Congress Campaign
P.O. Box 1553
Boise, Idaho 83701

Dear Mr. Peterson:

This responds to your letters of March 11, and 25, 1992, requesting an advisory opinion regarding the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the lease of a van by the LaRocco for Congress Campaign (the "Committee"), the principal campaign committee for Representative Larry LaRocco.

You state that the Committee wishes to lease a van. The van will be primarily used for transporting Mr. LaRocco and members of the campaign staff throughout the First Congressional District of Idaho for campaign related events in 1992. You state that when Mr. LaRocco is not on official or campaign business he may nevertheless use the van for personal purposes. On those occasions, however, Mr. LaRocco will reimburse the Committee for his personal use of the van.

Your request letters provide the following information regarding the structure of the leasing arrangement which you describe as consistent with normal business practices: The long term (3 year) lease will be with a commercial bank. Further, the Committee will be named as liable for the bank note financing the lease and will make the lease payments.

Following the election in November 1992, there will be a change in the financial arrangements and use of the van. You state that Mr. LaRocco proposes to make the lease payments to the bank from his personal funds, and to substitute his name on the bank note in place of the Committee's name. He will then use the van for his own personal use, and no further campaign use is

contemplated. You state that at the end of the lease period the van will become the personal property of Mr. LaRocco.

You ask whether this arrangement is permissible under the Federal election laws and regulations.

Under the Act, the term "contribution" includes any gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. 431(8)(A)(i). Commission regulations provide that "anything of value" encompasses providing any goods or services, including equipment, without charge or at a charge which is less than the usual and normal charge for such goods or services. 11 CFR 100.7(a)(1)(iii). Goods or services provided at the usual or normal charge are not considered contributions. Id.

The Commission has previously stated that, under the Act and Commission regulations, a candidate and the candidate's campaign committee have wide discretion in making expenditures to influence the candidate's election, but may not convert excess campaign funds to personal use. 2 U.S.C. 431(9) and 439a; Advisory Opinions 1992-4 and 1992-1.^{1/} Further, the Commission has held on several occasions that campaign committees may purchase vehicles for campaign use. Advisory Opinions 1987-2, 1984-59 and 1979-48. In addition, the Commission has permitted the purchase specifically where the candidate proposed to make reimbursed, personal use of the vehicle. Advisory Opinion 1984-59.^{2/}

You have stated that the proposed lease transaction is being conducted through a commercial bank and that its terms are consistent with normal business practices. The Commission expresses no opinion whether these arrangements are in keeping with usual trade practices since you have not presented that question for Commission review. For purposes of this opinion, however, the Commission will assume that the bank is making its usual and normal charge for the leasing transaction.

The Commission notes your situation is nearly identical to that considered in Advisory 1984-59. In that opinion, a candidate's campaign committee wished to purchase a van that would be used to provide transportation to committee staff for campaign activities. The candidate himself planned occasional personal use of the van, but stated that such use would be reimbursed to the committee. While it is true that in your situation, unlike Advisory Opinion 1984-59, the candidate plans to eventually assume personal financial responsibility with concomitant use and future ownership of the vehicle, this distinction does not materially alter the similarity, nor is it significant to the result here.

Therefore, the Commission concludes that your proposed arrangement is permissible under the Act and Commission regulations.^{3/} While you state that no further campaign use of the van is contemplated after the November 1992 general election, the Commission notes that any such use by Mr. LaRocco for a possible 1994 congressional campaign, will be viewed as an in-kind contribution from him.

The Commission expresses no opinion as to any application of the rules of the House of Representatives to your activity, nor as to any tax ramifications, since those issues are outside the Commission's 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)

Joan D. Aikens
Chairman for the Federal Election Commission

Enclosures (AOs 1992-4, 1992-1, 1987-2, 1984-59 and 1979-48)

ENDNOTES:

1/ Mr. LaRocco is not a "grandfathered" member of Congress and is, therefore, prohibited from converting campaign funds to personal use. However, because your request indicates that Mr. LaRocco will reimburse the Committee for his personal use of the van, the Commission need not address whether the personal use prohibition of 2 U.S.C. 439a would apply in this case.

2/ In discussing the reporting consequences of the reimbursement, the Commission noted that the payments so made would not be viewed as contributions to the committee because there would have been no purpose to influence a Federal election where the candidate was "merely paying for [his] non-campaign use of a committee asset." Advisory Opinion 1984-59. The committee was also advised that the payments should be treated as would any other payment falling into the reporting category of "Other Receipts."

3/ The Commission assumes that upon assuming the lease Mr. LaRocco will also accept a pro rata share of the financial obligations and charges attending the lease such as, for example, the security deposit payments. The Commission notes that the lease may provide for a discount on the purchase price of the van at the conclusion of the agreement. In that event, a portion of the discount may belong to the committee. However, the answer to this issue would depend upon the details of the lease agreement, and normal commercial business practices.