



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 10, 1992

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-19

JoAnne Waldum, Treasurer
Mike Kreidler for Congress Committee
3124 Jorgenson Road NE
Olympia, WA 98506

Dear Ms. Waldum:

This responds to your letters of April 6 and June 1, 1992, requesting an advisory opinion regarding the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the lease of computer equipment by Mike Kreidler for Congress Committee ("the Committee") from Mr. Kreidler's state campaign fund ("the state fund").

You state that Mr. Kreidler is a state senator from the State of Washington who has declared his intention to run for Congress in the newly created 9th Congressional District. After a review of the moneys in the state fund, you state that funds permissible under Federal regulations for use in a Federal campaign were transferred to the Committee, leaving primarily prohibited funds in the state fund.

With the funds remaining in the state fund, two identical computer systems were purchased.^{1/} The state fund, in turn, has leased the computers to the Committee for lease payments of \$200 a month. You state that it was your intention to lease the equipment to the Committee for a "fair market rate." Similar equipment is available, you state, for lease in your area with variation in the going lease rates. Your campaign manager determined that \$100 per month was a reasonable lease amount given the current rates prevailing in the Olympia area.

Notwithstanding the lease, the computers currently maintain and will continue to maintain data relating to Mr. Kreidler's previous campaigns as state senator, as well as data relating to his current Federal campaign. The purchase of the equipment by the state fund, as well as the continued retention of information from the state campaign, is necessary since Mr. Kreidler may

have to reconsider campaigning for his state senate seat.^{2/} You state that there will be no personal use of the computers by the candidate. You ask whether this leasing arrangement is permissible under the Act and Commission 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 and normal charge are not considered contributions. Id. The regulations define "usual and normal charge" for goods to be the price of those goods in the market from which they ordinarily would have been purchased at the time of the transaction. 11 CFR 100.7(a)(1)(iii)(B).

In the past, when the Commission has examined sale or purchase transactions between state and Federal committees, the concern has been that such transactions be conducted under current market practices and be at usual and normal charges. Providing goods or services or sharing costs at less than usual and normal charges will result in a contribution from the state committee to the Federal committee. Situations where state law permits the acceptance by state committees of contributions that would be prohibited under the Act raise the possibility of the transfer of prohibited funds, or equipment purchased with such funds, to the Federal committee. See Advisory Opinions 1989-4 (sale and resale of office equipment between affiliated state and Federal committees), 1980-38 (sharing of computer rental costs) and 1978-67 (sharing of headquarters costs).

According to your representations, the Committee has made an effort to determine a fair market value for leasing the equipment. Based on the assumption that the current arrangement between the Committee and the state fund reflects the usual and normal charges, it would not appear to result in a contribution to the Committee.^{3/} Therefore, the Commission concludes that your transaction is permissible under the Act and Commission regulations.^{4/} In reaching this conclusion, the Commission also assumes that the lease agreement between the Committee and the state fund will conform in all respects to other transactions involving the leasing of computer equipment and that all standard business charges and practices will be followed. For example, the lease should include a security deposit if such transactions usually entail such a requirement. See Advisory Opinion 1992-12.

The payments made by the Committee for the lease of the equipment are operating expenditures under the Act and must be itemized and reported as such by the Committee. See 2 U.S.C. 434(b)(4)(A) and (5)(A).

The Commission expresses no opinion as to the possible application of Washington 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)

Joan D. Aikens
Chairman for the Federal Election Commission

Enclosures (AOs 1992-12, 1989-4, 1980-38 and 1978-67)

ENDNOTES

- 1/ Specifically, the cost of the purchase is \$3,420 and you anticipate that the expected useful life of the system will be 5 years.
- 2/ Your request notes the legal questions surrounding the creation of the new seat for which Mr. Kreidler is a candidate. At the time of your request, the reapportionments resulting from the 1990 census were being challenged in Federal court by the State of Massachusetts. On June 26, 1992, the Supreme Court upheld the Census Bureau's determinations with the result that the State of Washington retains the added congressional district for which Mr. Kreidler is a candidate.
- 3/ The Commission expresses no opinion whether the Committee's determination of fair market value is valid and consistent with usual trade practices since you have not presented that question for Commission review. See Advisory Opinion 1992-12.
- 4/ The Commission is only addressing the use of the computer equipment. To the extent other items of value are provided to the Committee such as computer software, mailing lists, supplies, and a service contract, the normal and usual charge for such goods or services also would have to be paid by the Committee in order to avoid receiving prohibited contributions.