



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUL 7 3 50 PM '94

July 7, 1994

**MEMORANDUM**

TO: The Commission

THROUGH: John C. Surina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

SUBJECT: Draft AO 1994-20

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for July 14, 1994.

Attachment

**AGENDA ITEM**  
For Meeting of: JUL 14 1994

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
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JUL 7 3 50 PM '94

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2  
3 ADVISORY OPINION 1994-20

4 Albert M. Edwards, Jr.  
5 Treasurer, Committee for  
6 Congressman Charlie Rose  
7 P.O. Box 1178  
8 211 Fairway Drive  
9 Fayetteville, NC 28302-1178

**DRAFT**

Dear Mr. Edwards:

10 This responds to your letter dated June 9, 1994,  
11 requesting an advisory opinion on behalf of the Committee for  
12 Congressman Charlie Rose ("the Committee") concerning  
13 application of the Federal Election Campaign Act of 1971, as  
14 amended ("the Act"), and Commission regulations to the  
15 proposed gift of valuable Committee property.

16 The Committee is the principal campaign committee of  
17 Representative Charlie Rose who is a candidate for the 1994  
18 election cycle. You state that the Committee presently owns  
19 a 1991 "Fleetwood Flair RV" which it has used exclusively as  
20 a mobile campaign office. The vehicle has no liens or other  
21 encumbrances, and its purchase price was paid in full at the  
22 time of purchase. [Committee reports filed with the  
23 Commission disclose that \$38,660 of Committee funds was paid  
24 on June 20, 1991, to Allsport RV Center in Fayetteville for a  
25 "Mobil Campaign Office . . . title and license."] You  
26 explain that the vehicle was used in the 1992 election cycle  
27 and thereafter until April 25, 1994, serving as a mobile  
28 office "enabling the candidate and other representatives of  
29 the campaign to travel around the seventh district of North  
30 Carolina and perform a variety of campaign related

3 functions."

4 On April 25, the Committee purchased a campaign office  
5 and no longer uses or needs the vehicle for the campaign. It  
6 has learned, however, that the Health Department of  
7 Cumberland County, located in the 7th Congressional District  
8 of North Carolina, has a need for a similar vehicle. The  
9 Department would use the vehicle as a "mobile health clinic  
10 to reach the rural areas of the district." You add that any  
11 signs which identify Mr. Rose would be removed from the  
12 vehicle.

13 The Committee requests an advisory opinion permitting it  
14 to donate the vehicle to the Cumberland County Board of  
15 Health. The Committee proposes to transfer ownership of the  
16 vehicle to Cumberland County as a gift, and the Committee  
17 would receive no consideration for the transfer. Furthermore,  
18 it would not retain any "rights or interests of any kind" in  
19 the vehicle. You also state that the Committee would receive  
20 no tax benefit as a result of this transaction and intends  
21 "to avoid the receipt of consideration or other benefit."

22 The Act provides, in part, that amounts "received by a  
23 candidate as contributions that are in excess of any amount  
24 necessary to defray his expenditures . . . may be contributed  
25 to any organization described in section 170(c) of title 26,  
26 or may be used for any other lawful purpose" except that such  
27 amounts may not be converted by any person to any personal  
28 use. 2 U.S.C. §439a. Commission regulations similarly  
29 provide that excess campaign funds may be contributed to any  
30

3 section 170(c) organization or may be used for any lawful  
4 purpose, but may not be converted to personal use. 11 CFR  
5 113.2(b), 113.2(d).

6 The regulations define the phrase "excess campaign  
7 funds" to mean "amounts received by a candidate as  
8 contributions which he or she determines are in excess of any  
9 amount necessary to defray his or her campaign expenditures."  
10 11 CFR 113.1(e). In several past advisory opinions, the  
11 Commission has concluded that non-cash assets of a  
12 candidate's campaign committee are also covered by the phrase  
13 "excess campaign funds" and may be lawfully distributed under  
14 2 U.S.C. §439a and the cited regulations. Advisory Opinion  
15 1990-11 [donation to charities of handcrafted, silver belt  
16 buckles initially contributed to candidate committee],  
17 Advisory Opinions 1984-50 and 1981-11 [donations of candidate  
18 caricature items and candidate committee's mailing list to  
19 party committees], Advisory Opinion 1982-33 [gift of  
20 campaign committee automobile to former Senator who was  
21 exempt from personal use ban]; see Advisory Opinion 1990-26  
22 [cash proceeds from sale of computer owned by committee of  
23 retiring Member of Congress subject to same §439a rule as  
24 other committee funds].

25 In addition, the Commission has previously considered  
26 circumstances where a Member of Congress, who was also a  
27 candidate for re-election, determined that funds received by  
28 the campaign were in excess of amounts necessary to defray  
29 campaign expenditures. The Commission concluded that the  
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3 principal campaign committee of the Member/candidate could  
4 donate the excess funds to a qualified section 170(c)  
5 organization. Advisory Opinions 1992-21 and 1985-9.

6 The cited regulations and opinions are relevant in many  
7 respects to the factual situation you describe. The  
8 Committee continues to operate as the principal campaign  
9 committee of a candidate who is seeking re-election. It owns  
10 an unwanted, but still valuable, noncash asset that it wants  
11 to donate to a local governmental entity which is described  
12 in 26 U.S.C. §170(c). The relevant part of §170(c) provides  
13 that any contribution or gift to a State or to any political  
14 subdivision of a State is a "charitable contribution" if it  
15 is "made for exclusively public purposes." The request  
16 indicates that the Committee vehicle will be donated to a  
17 county government for use by the county health department as  
18 a mobile health clinic serving a segment of the public.  
19 Therefore, the Commission concludes that the described  
20 Committee gift is expressly permitted under the §170(c)  
21 clause of 2 U.S.C. §439a. Accordingly, the Committee may  
22 donate and transfer ownership of the vehicle to the  
23 Cumberland County, North Carolina, Health Department.

24 The Committee also seeks the Commission's advice as to  
25 how and when the transaction should be disclosed on Committee  
26 reports filed under the Act.

27 The Act and Commission regulations provide that the term  
28 "expenditure" includes the distribution of anything of value  
29 by any person for the purpose of influencing a Federal  
30

3 election. 2 U.S.C. §431(9)(A)(i), 11 CFR 100.8(a)(1). A  
4 principal campaign committee is required to identify each  
5 person to whom it makes an expenditure "to meet the  
6 committee's operating expenses" if the amount or value of the  
7 expenditure exceeds an aggregate (or total) amount of \$200  
8 for the calendar year. 11 CFR 104.3(b)(4)(i), see 2 U.S.C.  
9 §434(b)(5)(A).<sup>1/</sup> In addition, any such candidate authorized  
10 committee is required to identify any person to whom it makes  
11 any disbursement in an "aggregate amount or value" exceeding  
12 \$200 in the calendar year. 2 U.S.C. §434(b)(6)(A), 11 CFR  
13 104.3(b)(4)(vi) [emphasis added].

14 In the situation presented here it appears that the  
15 described gift will not be delivered in any manner or  
16 circumstances indicating the Committee's purpose is to  
17 influence Mr. Rose's re-election. The request indicates that  
18 the Committee no longer has any need to use the vehicle for  
19 any campaign purpose and intends to avoid receiving any  
20 consideration or other benefit from making the gift.<sup>2/</sup>

21  
22  
23 <sup>1/</sup> The cited provisions further require that other  
24 information must also be disclosed if the expenditure or  
disbursement is required to be itemized. Namely, the date,  
amount and purpose of the transaction.

25 <sup>2/</sup> The Commission notes that if the Committee delivers the  
26 vehicle to the County in circumstances where a public  
27 ceremony or event is sponsored by either Mr. Rose or the  
28 County, which is attended by him or his representatives, then  
29 the gift would be viewed as an expenditure to influence his  
30 re-election to Federal office. This would not bar the gift,  
but would require that it be reported as a campaign  
expenditure by the Committee, instead of as an other  
disbursement. The same memo entry reporting procedure, as  
discussed below, would apply.

3 Accordingly, the Commission concludes that the gift is  
4 not an expenditure by the Committee, but is instead a  
5 Committee disbursement of something of value. It should  
6 therefore be reported as an "other disbursement" at fair  
7 market value, which can be determined from used motor vehicle  
8 pricing manuals (e.g. "blue book") covering North Carolina,  
9 by memo entry on a separate Schedule B for FEC Form 3. The  
10 transaction should be included in the Committee report  
11 covering the period when delivery of the vehicle is made to  
12 the County. As a memo entry, the Committee gift would not  
13 affect reported cash outlays or ending cash balance for the  
14 reporting period and would not be included in the amounts  
15 presented on the summary pages of the Committee's report.

16 The Commission expresses no opinion as to any tax  
17 ramifications related to the Committee's gift, nor as to the  
18 possible application of House rules to the gift, because  
19 those issues, if any, are not within its jurisdiction.

20 This response constitutes an advisory opinion concerning  
21 application of the Act, or regulations prescribed by the  
22 Commission, to the specific transaction or activity set forth  
23 in your request. See 2 U.S.C. §437f.

24 For the Commission,

25  
26 Trevor Potter  
27 Chairman

28 Enclosures (AOs 1992-21, 1990-26, 1990-11, 1985-9, 1984-50,  
29 1982-33, and 1981-11)  
30