



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Jul 28 10 40 AM '94

July 28, 1994

MEMORANDUM TO: The Commission

THROUGH: John C. Suzina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Michael Marinelli  
Staff Attorney

SUBJECT: Draft AO 1994-22

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for August 4, 1994.

Attachment

**AGENDA ITEM**  
For Meeting of: AUG 4 1994

1  
2 CERTIFIED MAIL  
3 RETURN RECEIPT REQUESTED

**DRAFT**

4 ADVISORY OPINION 1994-22

5 Jack Cheloha  
6 Patrick Combs for United States Congress  
7 P.O. Box 83281  
8 Lincoln, Nebraska 68502-3281

9 Dear Mr. Cheloha:

10 This refers to your letter dated June 20, 1994, as  
11 supplemented by your letter dated July 7, 1994, on behalf of  
12 Patrick Combs for United States Congress concerning the  
13 application of the Federal Election Campaign Act of 1971, as  
14 amended ("the Act"), to the lease of a mobile home by the  
15 campaign.

16 Patrick Combs for United States Congress ("the  
17 Committee") is the principal campaign committee for the  
18 election of Patrick Combs to the Congressional seat from the  
19 First District of Nebraska. You state that the Committee  
20 wishes to use a mobile home during its congressional  
21 campaign. The mobile home is owned by Woody Combs Auto Sales  
22 and Leasing. You state that the candidate, Patrick J. Combs,  
23 and his father, Forest "Woody" Combs, are general partners  
24 and the sole owners of this business which is not organized  
25 as a corporation. The mobile home is leased to the  
26 Committee, you state, at the fair market rate. You ask if  
27 the lease and operation of the mobile home by the Committee  
28 for what you describe as "limited campaign purposes," using  
"dealer plates" obtained by Woody Combs Auto Sales and  
Leasing, is permissible under the Act and Commission

1  
2 regulations.

3 Under the Act, the term "contribution" includes any  
4 gift, subscription, loan, advance or deposit of money or  
5 anything of value made by any person for the purpose of  
6 influencing any election for Federal office. 2 U.S.C.  
7 §431(8)(A)(i). Commission regulations provide that "anything  
8 of value" encompasses providing any goods or services,  
9 including equipment, without charge or at a charge which is  
10 less than the usual and normal charge for such goods or  
11 services. 11 CFR 100.7(a)(1)(iii). Goods or services  
12 provided at the usual or normal charge are not considered  
13 contributions. Id. The regulations define "usual and normal  
14 charge" for goods to be the price of those goods in the  
15 market from which they ordinarily would have been purchased  
16 at the time of the transaction. 11 CFR 100.7(a)(1)(iii)(B).

17 The Commission has previously stated that, under the Act  
18 and Commission regulations, a candidate and the candidate's  
19 campaign committee have wide discretion in making  
20 expenditures to influence the candidate's election, but may  
21 not convert excess campaign funds to personal use. 2 U.S.C.  
22 §§431(9) and 439a; Advisory Opinions 1992-12, 1992-4 and  
23 1992-1.

24 In past opinions, the Commission has held that campaign  
25 committees may lease campaign office space and equipment from  
26 a corporation owned by the candidate, may pay a portion of  
27 the candidate's rent where campaign staff use a candidate's  
28 apartment for lodging, may pay rent to a candidate for

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2 campaign office space in a candidate's house, may pay a  
3 portion of the rent of a candidate's residence where a part  
4 of the house is used for campaign equipment storage and may  
5 rent a shed on the candidate's property for campaign use.  
6 See Advisory Opinions 1994-8, 1993-1, 1988-13, 1985-42 and  
7 1983-1.

8 In particular, your situation is somewhat similar to  
9 that considered in Advisory Opinion 1994-8 where a campaign  
10 committee wished to rent office space from a corporation  
11 owned and controlled by the candidate and his wife. The  
12 Commission agreed that the rental payments, which were at  
13 normal and usual charge for such rentals, would not violate  
14 the Act.<sup>1/</sup> Given these precedents, the Commission concludes  
15 that your proposed arrangement is permissible under the Act  
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20 <sup>1/</sup> However, the Commission also pointed out in Advisory  
21 Opinion 1993-1 that where the campaign leases candidate  
22 controlled or owned property "[i]f such rental payments by a  
23 candidate's campaign committee represent more than the usual  
24 and normal charge for the use of the facilities in question,  
25 the amount in excess of the usual and normal charge would be  
26 subject to the personal use ban of 2 U.S.C. §439a." Advisory  
27 Opinion 1993-1. In this situation, if the Committee pays  
28 more than usual and normal charge for the rental, it would  
unduly augment the earnings of an asset owned by the  
candidate and thereby violate section 439a. See Advisory  
Opinions 1994-8 and 1988-13.

If, on the other hand, the Committee pays less than fair  
market value, this would constitute a contribution by Woody  
Combs Auto Sales and Leasing to the campaign which, as a  
partnership, could not contribute more than \$1,000 to the  
candidate. See 2 U.S.C. §§441a(a)(1) and 431(11).

and Commission regulations.<sup>2/</sup> The rental payments should be disclosed by the Committee as operating expenditures as required by the Act and Commission regulations. See 11 CFR 104.3(b)(2), 104.3(b)(4).<sup>3/</sup>

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. See 2 U.S.C. §437f.

For the Commission,

Trevor Potter  
Chairman

Enclosures (AOs 1994-8, 1993-1, 1992-12, 1992-4, 1992-1, 1988-13, 1985-42 and 1983-1)

<sup>2/</sup> The Commission assumes that the lease agreement and all understandings between the parties will conform in all respects to the normal business practices which govern these types of transactions. In particular, the use of "dealer plates" by the campaign would be permissible if such use were either consistent with such lease agreements or, in any separate arrangement allowing such use, the Committee paid the fair market value for this benefit. The Commission further assumes that the rental payments will be neither larger or smaller than fair market value.

<sup>3/</sup> The Commission notes that it is presently considering new rules governing the conversion of campaign funds to personal use. See FEC Notice of Proposed Rulemaking, published in the Federal Register on August 30, 1993, at pages 45463 through 45467. The conclusion of this opinion may be modified or overruled by the adoption of a final rule, but the opinion may be relied upon until such a change is made. If a change is made, it will become effective prospectively on a specific date announced in the Federal Register, which the Commission expects will follow the November 1994 elections. In addition, the Commission's written explanation and justification for its new rule will identify each past advisory opinion that is modified or superseded.