



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 5, 1994

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-22

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

Dear Mr. Cheloha:

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

Patrick Combs for United States Congress ("the Committee") is the principal campaign committee for the election of Patrick Combs to the Congressional seat from the First District of Nebraska. You state that the Committee wishes to use a mobile home during its congressional campaign. The mobile home is owned by Woody Combs Auto Sales and Leasing. You state that the candidate, Patrick J. Combs, and his father, Forest "Woody" Combs, are general partners and the sole owners of this business which is not organized as a corporation. The mobile home is leased to the Committee, you state, at the fair market rate. You ask if the lease and operation of the mobile home by the Committee 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 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 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).

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 1992-12, 1992-4 and 1992-1.

In past opinions, the Commission has held that campaign committees may lease campaign office space and equipment from a corporation owned by the candidate, may pay a portion of the candidate's rent where campaign staff use a candidate's apartment for lodging, may pay rent to a candidate for campaign office space in a candidate's house, may pay a portion of the rent of a candidate's residence where a part of the house is used for campaign equipment storage and may rent a shed on the candidate's property for campaign use. See Advisory Opinions 1994-8, 1993-1, 1988-13, 1985-42 and 1983-1.

In particular, your situation is somewhat similar to that considered in Advisory Opinion 1994-8 where a campaign committee wished to rent office space from a corporation owned and controlled by the candidate and his wife. The Commission agreed that the rental payments, which the requester stated were at normal and usual charge for such rentals, would not violate the Act.^{1/} Given these precedents, the Commission concludes that your proposed arrangement is permissible under the Act and Commission regulations.^{2/} 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).^{3/}

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,

(signed)

Trevor Potter
Chairman

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

Endnotes

1/ However, the Commission also pointed out in Advisory Opinion 1993-1 that where the campaign leases candidate controlled or owned property "[i]f such rental payments by a candidate's campaign committee represent more than the usual and normal charge for the use of the facilities in question, the amount in excess of the usual and normal charge would be subject to the personal use ban of 2 U.S.C. 439a." Advisory Opinion 1993-1. In this situation, if the Committee pays 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).

2/ 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.

3/ 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.