



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 23, 1996

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996-29

Stanley R. de Waal, C.P.A.
De Waal, Keeler & Company, P.C.
257 East 200 South #950
Salt Lake City, Utah 84111

Dear Mr. de Waal:

This responds to your letter dated June 24, 1996, requesting an advisory opinion on behalf of Chris Cannon for Congress, Inc. concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the attribution of in-kind contributions to more than one election.

Chris Cannon for Congress, Inc. ("the Committee") is the principal campaign committee of Chris Cannon for election in 1996 to the House of Representatives from the Third District of Utah. You are the Committee's treasurer. Mr. Cannon ran for the Republican nomination at a State Republican convention on May 4. (All dates herein are in 1996.) He failed to receive the nomination at the convention, where no candidate received the requisite number of delegate votes to obtain the nomination, but gained the nomination in the primary held on June 25.

You state that, on March 29, the Committee received in-kind contributions of used computer equipment, totaling \$1,850 from Larry Lofgreen, \$1,850 from Vikki Lofgreen, and \$1,300 from Roger Kartchner.¹ The Committee's April Quarterly report disclosed in-kind contributions of computer equipment on that date in the following increments: (1) from Larry Lofgreen -- \$1,000 for the convention and \$850 for the primary; (2) from Vikki Lofgreen -- \$782.48 for the convention, \$1,000 for the primary, and \$67.52 for the general election; and (3) from Roger Kartchner -- \$1,000 for the convention and \$300 for the primary.

You state that the equipment was "independently appraised, and determined to have a useful life of at least two years." The Committee is presently using the equipment and will use it in the

future. You note that the Committee received from each contributor a designation to allocate the contribution over the several elections in the 1996 cycle. You state that the Committee "allocated [the contribution] as specified by the contributor" because the equipment would not be consumed at the time of receipt, but would last through the life of the campaign and beyond. The Committee concluded that it should be able to "allocate the value over future elections while the equipment is still being used."

The Committee asks whether the computer equipment "is considered to be consumed" (1) at the time of receipt with any value in excess of \$1,000 being paid for by the Committee or otherwise compensated; or (2) over a specific time period so that the fair market value, if in excess of \$1,000, can be designated to several elections.

Contributions by an individual to the authorized committees of a Federal candidate are limited to \$1,000 per election. 2 U.S.C. 441a(a)(1)(A). Under the Act and Commission regulations, the term "contribution" includes "anything of value" given for the purpose of influencing a Federal election, such as in-kind contributions of goods or services. 2 U.S.C. 431(8)(A)(i); 11 CFR 100.7(a)(1) and 100.7(a)(1)(iii)(A). The provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution. The amount of the contribution is the difference between the usual and normal charge for the goods and services at the time of the contribution and the amount charged to the committee. 11 CFR 100.7(a)(1)(iii)(A). For goods, the usual and normal charge is defined as the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. 11 CFR 100.7(a)(1)(iii)(B). Thus, an individual's contribution for a single election of computer equipment valued in excess of \$1,000 at the time of the donation would be in excess of the limits of the Act.

Commission regulations, however, contemplate the ability of a contributor to make a contribution of funds, prior to the primary, in excess of \$1,000 for an election cycle, so long as that person specifically designates an amount for the general election also. See 11 CFR 110.1(b)(2) and (b)(4); Advisory Opinions 1992-15, 1991-12, and 1988-41. To designate an amount for the general election, a contributor should clearly indicate, on the check, money order, or other negotiable instrument, the particular election for which the contribution is made. Alternatively, the contribution should be accompanied by a writing signed by the contributor which clearly indicates the particular election. 11 CFR 110.1(b)(4)(i) and (ii).² See Advisory Opinion 1990-30.

For contributions received prior to the primary date for the general election, the committee must use an acceptable accounting method to distinguish between primary and general election contributions, e.g., by designating separate accounts or the establishment of separate books and records for each election. 11 CFR 102.9(e). In-kind contributions are reportable as both contributions and expenditures. 11 CFR 104.13(a).

In-kind contributions of equipment with a long-term useful life such as an election cycle, or perhaps beyond, are analogous to contributions of money. Just as money contributions may be used or "consumed" over a period of time, and just as money contributions designated for the general election will be used during the general election, the computer equipment you describe

will be used throughout all three elections in the Utah election cycle³ and may perform functions related to each election. A contribution of this type of equipment is distinguishable from in-kind contributions that are used only for one particular election, such as non-exempt contributions of food or beverages consumed by primary election day workers, or printing or mailing costs related to general election events or fundraisers.⁴

The Commission concludes, therefore, that the donation of the computer equipment, valued in excess of \$1,000, by the contributors is permissible. The Commission assumes that the designation received from each of the contributors was a written designation signed by that individual and given to the Committee at the time of the donation or within the time for redesignation allowed by the regulations. 11 CFR 110.1(b)(5)(ii).⁵

Because the in-kind contributions in this instance did not exceed each of the three limits available in the 1996 election cycle, the Commission does not reach the question of the designation of in-kind contributions for the next election cycle to a candidate still seeking election during one cycle.

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)

Lee Ann Elliott
Chairman

Enclosures (AOs 1992-25, 1992-15, 1991-12, 1990-30, 1988-41, and 1986-17)

1 The Committee's April Quarterly also discloses an in-kind contribution of \$217.52 in "computer supplies" from Vikki Lofgreen on February 1 which, like the equipment contribution of \$782.48, was designated for the convention. Her total of in-kind contributions for the convention was \$1,000, and her total of in-kind contributions disclosed on this report was \$2,067.52.

2 The regulations also provide an opportunity for written redesignations by the contributor in accordance with 11 CFR 110.1(b)(5). 11 CFR 110.1(b)(4)(iii).

3 As indicated above, Mr. Cannon has been a candidate in three elections during this cycle. Because the convention had the power to nominate a candidate (i.e., a candidate who received at least 70 percent of the votes cast would be nominated without having to run in a subsequent primary), the convention was an election with a separate contribution limit. Because no one received the requisite vote percentage at the convention, the party nominee was selected by a subsequent primary where a separate limit is also applicable. A third limit is applicable for the November general election. See Advisory Opinion 1992-25.

4 The Commission notes that Advisory Opinion 1986-17 restricted the use of money contributions designated for the general election to make expenditures prior to the primary. The

opinion addressed the limited circumstances where it is necessary to make advance payments to vendors for goods and services that will be provided to the committee during the general election, and it did not permit the use of such contributions for expenditures to purchase goods or services to be used in both the primary and general elections. The opinion, however, did not consider the situation in which, as here, an individual makes an in-kind contribution of valuable equipment that, by its nature, could be used for a primary election and other purposes, although subject to the obligation of the donee committee to compensate the contributor by making a timely and sufficient refund for any use that, absent a refund, would result in an excessive contribution under 2 U.S.C. 441a. See 11 CFR 103.3(b)(3). See also footnote 5.

5 The Commission notes that the Committee's April Quarterly correctly reports the contributions as expenditures as well, and denotes the applicable elections for each contribution. It further notes that, had Mr. Cannon been defeated in the primary and not been a candidate in the general election, the Committee, acting in accord with the treatment of money contributions, would have had to refund the amount designated for the general election, or obtain the contributor's redesignation of that amount for the next election, i.e., the 1998 convention. Advisory Opinion 1992-15.