FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 8, 1976

Re: AOR 1976-56

Honorable James D. Santini
House of Representatives
Washington, D.C. 20515

Dear Mr. Santini:

This letter is in further response to your request of June 22, 1976 for an opinion from the Federal Election Commission concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), to air transportation and complimentary hotel services provided to a Federal candidate. I note that on July 12, 1976, an Assistant General Counsel of the Commission responded with a letter discussing required reimbursement and reporting of air transportation provided by corporations to Federal candidates. This letter will discuss complimentary accommodations provided to Federal candidates by corporate and noncorporate hotels.

You ask for clarification as to whether "complimentary" hotel rooms, food, and beverage may be provided to an individual who is a Federal candidate within the meaning of 2 U.S.C. §431(b). Under 2 U.S.C. §441b a corporation is prohibited from making a contribution or expenditure in connection with a Federal election. The section contains a definition of "contribution" in §441b(b)(2): "For purposes of this section, . . . the term 'contribution or expenditure' shall include. . .any services, or anything of value. . .to any candidate. . .in connection with any election to any [Federal] office."[1] The term "anything of value" is defined in §100.4(a)(1)(iii) of the Commission's proposed regulations, and includes "goods, facilities,. . . services. . . or other in-kind contributions provided without charge."[2] Complimentary hotel facilities and services are within the above definition of "anything of value." If provided by a corporation to a Federal candidate "in connection with" any Federal election, they would be unlawful

[1] You should note that this specific definition is broader than the general definition contained in 2 U.S.C. §431(e), which defines as a "contribution" anything of value given "for the purpose of influencing" a Federal candidate's nomination or election.

[2] Section 104.3 of the proposed regulations requires that "in-kind contributions" be reported as such and valued at the normal and usual retail price in the market from which the article or service contributed normally would have been purchased.

"in-kind" contributions under 2 U.S.C. §441b. If provided by a noncorporate hotel to a Federal candidate "for the purpose of influencing" the candidate's election, they would be permissible "in-kind" contributions, and would be applied against the contribution limitations of the hotel organization, as a "person," to that candidate under 2 U.S.C. §441a(a).[3]

Generally, an offer of complimentary hotel accommodations to a Federal candidate would be presumed to be "in connection with" a Federal election, and corporations would be prohibited from making their facilities available on such a basis. However, the presumption may be rebutted by a showing that such accommodations are offered by the hotel in the ordinary course of business to non-candidates as well as candidates, and that the hotel could reasonably expect to derive a commensurate commercial return from the offer. In a telephone conversation of July 16, 1976, with an attorney on the Commission's legal staff, Mr. Jack Carpenter of your staff discussed the practice common in the Nevada hotel business of providing what your letter termed "certain customers" with complimentary hotel accommodations. It is the Commission's understanding from that conversation that such complimentary services are generally provided to visiting dignitaries, elected or public officials, Cabinet members, etc., in addition to individuals fond of gambling, as part of normal hotel business practice, the purpose being either increased prestige or future customers for the hotel.

In the context of the Nevada hotel business, as outlined in your letter and the telephone conversation noted, complimentary accommodations provided to Federal candidates would be neither in connection with a Federal election, nor offered to influence a Federal candidate's election, and thus would not be "contributions" under the Act, provided they were offered in the ordinary course of business by the hotel to increase its publicity and thus its future patrons, and provided they were not offered in a partisan manner to select candidates. The Commission emphasizes that this conclusion is applicable only to this particular factual situation and should not be construed as a precedent in dissimilar circumstances.

You ask whether the exemption contained in the Commission's original draft of the proposed regulations and relating to corporate facilities used by stockholders and employees would apply to room charges in hotels owned by corporations "organized by authority of any law of Congress." Proposed §114.9(a)(1) as submitted to the Congress on August 3, 1976, relates only to "stockholders and employees" of a corporation who makes "occasional, isolated or incidental" use of the corporation's facilities for their own "individual volunteer activity in connection with Federal election." This proposed regulation is not pertinent to the issues raised by your letter as evident from the

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[3] The definition of "contribution" contained in §431(e) exempts, in subsection (5)(c), the value of discounts from the normal comparable charges for food or beverage sold by a vendor, whether or not incorporated, which discounts do not exceed a cumulative value of $500 per candidate per election; however, the vendor may not sell the food or beverage at less than his cost.

discussion above. A copy of §114.9 of the proposed regulations as recently submitted to Congress is enclosed for your convenience.

This response relates to your opinion request but may be regarded as informational only and not as an advisory opinion since it is based in part on proposed regulations of the Commission which must be submitted to Congress. The proposed regulations may be prescribed in final form by the Commission only if not disapproved either by the House or the Senate within thirty legislative days from the date received by each body. 2 U.S.C. §438(c). These proposed regulations were submitted to Congress on August 3, 1976. It is, the Commission's view that no enforcement or compliance action should be initiated in this matter if your actions conform to the conclusions and views stated in this letter.

Sincerely yours,

(signed)
Vernon W. Thomson
Chairman for the
Federal Election Commission

Enclosure