



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

July 17, 1978

AO 1978-34

Ms. Ginger King  
Citizens for Downey '78  
P.O. Box 91P  
Bay Shore, New York 11706

Dear Ms. King:

This responds to your letter of June 8, 1978, requesting an advisory opinion on behalf of the Citizens for Downey '78 Committee concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and applicable regulations.

Specifically, you ask whether, rather than establishing its own phone bank, the Committee may use corporate and noncorporate business telephones throughout the congressional district, reimbursing the businesses for the costs of the phone calls at a rate of \$.076. You state that currently the New York Telephone Company charges a monthly telephone usage rate for business phones which would include phones used for election campaigns. As of October 1, 1978, all local calls will be charged individually at the rate of \$.076 per call.

Section 114.9(d) of the Commission's regulations provides that persons who make any use of corporate or labor organization facilities, such as by using telephones or typewriters for activity in connection with a Federal election, are required to reimburse the corporation or labor organization within a commercially reasonable time in the amount of the normal and usual rental charge, as defined in 100.4(a)(1)(iii)(B), for the use of the facilities. As defined, normal and usual rental charge of goods is the price of those goods in the market from which they ordinarily would have been purchased at the time of their contribution.

The Commission would regard providing the use of a telephone to a candidate at cost, as you suggest at \$.076 per call, as an in-kind contribution. Contribution is defined in 2 U.S.C. 431(e)(1) as a gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the election of any person to Federal office. According to 100.4(a)(1)(iii) of Commission regulations, "anything of value" includes in kind contributions provided without charge or at a charge which is below the usual and normal charge for the items. On these facts the amount of the contribution is the difference between the cost (at \$.076 each) of those phone calls made and the normal and usual charge for the rental of such phones in the

normal market, including the use of office space, utilities and furniture to conduct the telephoning.

As corporations are prohibited by 2 U.S.C. 441b from making any contributions to a candidate or committee, payment of \$.076 per call to the corporation would not be sufficient under the Act. In the instance of noncorporate business telephones, an in-kind contribution is permissible subject only to the \$1,000 per election contribution limits set forth in 2 U.S.C. 441a(a)(1).

If these business phones are used, the Committee is required to determine the normal and usual charge for using the phones, including the use of office space, utilities and furniture to conduct the telephoning. The amount so computed must be paid to the corporation within a commercially reasonable period and the payments reported in accord with 2 U.S.C. 434(b)(9). If in the case of noncorporate business phones, the committee does reimburse the business at only \$.076 per call, the committee must treat and report the cost at \$.076 as an expenditure or debt. The difference between the normal and usual charge, and the 0.076 per call paid, would be treated as an in-kind contribution from the noncorporate business and a corresponding expenditure of the Committee. See 11 CFR 104.3(a).

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Joan D. Aikens  
Chairman for the  
Federal Election Commission