FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 13, 1979

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-24

Mr. Ronald Hein
2824 Seabrook
Topeka, Kansas 66614

Dear Mr. Hein:

This responds to your letter of May 10 as supplemented by your letter of June 12, 1979, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the sale of certain goods remaining from your Congressional primary campaign to a state-registered political action committee or to your state senate campaign.

Your letter states that you were a candidate in a 1978 Congressional primary and due to outstanding campaign debts* still have "an open campaign committee" required to report under the Act. You also served in the Kansas State Senate while pursuing your Congressional campaign, and you still have an active state campaign committee. You state that under Kansas law both your state senate committee and state registered political action committees may receive corporate contributions.

You explain that during your Congressional campaign the Congressional campaign committee purchased several thousand dollars worth of yard stakes and materials for use in the campaign; the committee still has on hand over $500 worth of yard sign stakes. The Committee also owns a few items of equipment such as a typewriter and "print powder." Neither the stakes nor equipment have any identifying logo which would limit their useability by any person. Your committee would now like to sell these things for their fair market value. Thus, you ask the following questions:

* According to the April 10 Quarterly report for 1979 filed by the Ron Hein for Congress Committee, the Committee has outstanding debts and obligations in the amount of $54,594.81.

1. Would it be legal under the federal election laws for a state-registered political action committee, which does not otherwise qualify under federal regulations for contributions to a federal campaign, to purchase the yard signs and other equipment owned by the congressional campaign for their fair market value, and then, assuming the legality of a contribution pursuant to state law, to donate those same yard sign stakes to my Senate campaign?

2. If the answer to the first question is negative, would it be possible for my Senate campaign to purchase the yard sign stakes and equipment from my congressional campaign if the monies which are co-mingled in the Senate campaign include contributions otherwise prohibited by federal law?

3. If the answer to No. 2 prohibits the use of co-mingled funds in the Senate campaign for the purchase of the yard sign stakes and equipment from the congressional campaign, could such a purchase be made lawfully under the federal election law if the funds in the State Senate campaign were used to purchase the yard sign stakes and equipment on a last-in, first-out basis, assuming that the funds actually used to make the purchase came from sources which are legal contributors under the federal election law?

Section 100.4(a)(1)(iii)(A) of the Commission's regulations considers such things as goods, equipment and supplies to be "things of value." If a thing of value is provided to a candidate or political committee without charge or at a charge below the usual and normal charge for such an item, a contribution is made to the extent of the difference between the usual and normal charge for the item at the time it is given and the amount charged the candidate or political committee. "Usual and normal charge" is defined as the price of goods or services in the market from which they ordinarily would have been purchased at the time of their contribution. 100.4(a)(1)(iii)(B).

The converse situation, that is sale of a "thing of value" by a political committee can also result in a contribution received by that committee or even a contribution made by it to another political committee or candidate. See Advisory Opinion 1979-18, copy enclosed. In answer to your first question, sale to the state PAC of materials and equipment which were purchased for use in the congressional campaign and were still on hand at the conclusion of the campaign, could involve the receipt of a contribution by your Congressional committee from the purchasing PAC if the purchase price exceeds the usual and normal charge for those specific leftover materials in the market from which they would ordinarily be purchased. In that instance your Congressional committee would receive a prohibited contribution if the PAC had received corporate monies, since the Act prohibits direct or indirect corporate contributions to a campaign committee in connection with an election to Federal office. 2 U.S.C. 441b(b)(2). If, however, the price paid by the PAC is no greater than the usual and normal charge for those specific materials, the Commission concludes that no "contribution" would take place and that the sale would not be prohibited under the Act. The Commission offers no guidance as to the legality of the donation by the state PAC to your state Senate campaign since that is beyond the purview of the Act.

In light of the fact that question number one was answered in the affirmative it is unnecessary for the commission to address questions two and three. The Commission does note, however, that the answer to number one would apply to question number two as well. Again, see AO 1979-18.

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)

Robert O. Tiernan
Chairman for the
Federal Election Commission

Enclosure