FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 9, 1985

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-19

Gordon P. Katz, Esq.
Widett, Slater & Goldman, P.C.
60 State Street
Boston, MA 02109

Dear Mr. Katz:

This responds to your letters of June 6 and July 10, 1985, requesting an advisory opinion on behalf of the Thomas J. Vallely for Congress Committee, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the proposed joint purchase of a computer system.

The Thomas J. Vallely for Congress Committee ("the Committee") is registered with the Commission and is the principal campaign committee of Mr. Vallely, who intends to seek election in 1986 as congressman from the Massachusetts Eighth Congressional District. The Committee desires to acquire a computer system under a proposed joint purchase arrangement with a for-profit political consulting firm ("the Firm"), incorporated under the laws of Massachusetts. The Committee is presently a sublessee of the Firm and pays monthly rent to the firm.[1]

The computer system, including hardware, software, and initial programming, will cost $44,000. Under the proposed arrangement, the Committee and the Firm will each assume 50 percent of the cost of acquiring the system and will each receive 50 percent ownership of the system. The disc drive of the computer along with a printer and two terminals will be located in the space subleased by the Committee. Another printer and several terminals will be located in space occupied by the Firm. Any programming change will be done at the expense of the party requesting the change. The costs of operating the system, such as electricity, are covered by the Committee's rental payment, which includes a factor for utilities.

The Committee will use the system to (1) maintain and develop a donor file for direct mail fundraising; (2) compile a list of volunteers; and (3) perform other functions related to campaign organization. The Firm will use the system to (1) process issue-related survey research data for corporate clients; (2) do word processing; and (3) maintain its marketing list. You state that both the Committee and the Firm "will have freely available access at any time without restriction, and the Committee will have as much use and access of the System as a copurchaser as it would have if it were the sole purchaser." You add that the Committee has sufficient funds to acquire the system by itself but that it can accomplish the acquisition more efficiently and at lesser expense with a co-purchaser. You further state that there is no plan or agreement to transfer the system from one party to the other at some later date.[2]

You ask whether the proposed arrangement is permissible under the Act.[3]

The Act prohibits a corporation from making a contribution or expenditure in connection with a Federal election and prohibits a candidate or political committee from knowingly accepting or receiving a prohibited corporate contribution or expenditure. 2 U.S.C. 441b(a); 11 CFR 114.2(b) and (c). The Act defines contribution or expenditure to include "any direct or indirect...gift of...anything of value...to any candidate, campaign committee, or political party or organization." 2 U.S.C. 441b(b)(2); 11 CFR 114.1(a)(1). The term "anything of value" has been broadly construed to include things which can be consumed or utilized to influence a Federal election unless specifically exempted by the Act or regulations. Compare Advisory Opinions 1982-4 and 1976-86 with Advisory Opinion 1978-52; see also 11 CFR 100.7(a)(1)(iii) and 100.8(a)(1)(iv).

Further guidance is found in the Commission's previous advisory opinions concerning joint investments and joint rentals between a Federal political committee and a non-Federal committee that could accept funds from prohibited sources. In the case of joint investments, the Commission focused on (1) whether the Federal committee had sufficient funds to make the investment at the same terms on its own and (2) whether it would receive any favorable or preferential treatment or benefit by the joint investment that it could not achieve if it alone made the investment. See Advisory Opinions 1981-20 and 1981-19. In the case of joint rentals, the Commission concluded that such arrangements between a Federal political committee and a state candidate's committee were permissible provided the costs of the shared facilities were allocated between the two campaigns to reflect equitably the actual use and benefit to each campaign. See Advisory Opinions 1980-38 (computer services) and 1978-67 (campaign headquarters). Accordingly, these opinions focus the inquiry on (1) the ability of the Federal committee to undertake the proposed action on its own; and (?) a comparison of the cost each pays with the benefits each receives to determine whether the Federal committee will receive any benefit or gift of a thing of value through the joint arrangement that it would not receive if it acted alone.

You state that the Committee has sufficient funds to acquire the computer system by itself. According to your request, the Committee will acquire as much use and access of the system as a joint purchaser as it would as a sole purchaser. It will, however, acquire only a 50 percent ownership interest in the system as a joint purchaser. Nevertheless, the value of the computer system as an operating asset to the Committee in terms of how it can and will be utilized for campaign purposes remains the same whether the Committee is a joint purchaser or a sole purchaser. Only its value as a capital asset changes under the joint purchase arrangement, to

correlate to the percentage of the Committee's investment. Since the Act prohibits a corporate contribution in connection with a Federal election, the value of the computer system in this regard becomes paramount. Therefore, to this extent, the proposed joint purchase arrangement between the Firm and the Committee would finance or subsidize the Committee's campaign activities and free up approximately $22,000 in Committee funds that it may then use for other campaign purposes. Thus, under the proposed joint purchase arrangement, the Committee will receive a tangible benefit or gift of a thing of value from the Firm by its participation in the arrangement.

Accordingly, the proposed joint purchase arrangement between the Committee and the Firm will result in the Committee's acceptance or receipt of a prohibited corporate contribution under 2 U.S.C. 441b(a).

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activities set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

John Warren McGarry
Chairman for the Federal Election Commission

Enclosures (AOs 1985-1, 1983-2, 1982-4, 1981-20, 1981-19, 1980-38, 1978-52, and 1976-86)

1. Although you have not presented any question regarding the rental terms between the Committee and the Firm, the Commission notes that the rent must be set at the normal and usual charge for such office space. See 11 CFR 100.7(a)(1)(iii) and 100.8(a)(1)(iv); Advisory Opinion 1982-4.

2. Advisory Opinion 1985-1 discusses the sale of a computer system by a political committee as part of its termination.

3. You have not presented any questions regarding the situations where the Committee purchases the system itself and rents time to the Firm or where the Firm purchases it alone and rents time to the Committee. See, e.g., Advisory Opinions 1983-2 and 1982-4.