FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 12, 1994

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-8

Liz Herring, Campaign Staff
Friends of Mike Parker for Congress
Post Office Drawer 229
Brookhaven, MS 39601-0229

Dear Ms. Herring:

This responds to your letter dated March 31, 1994, as supplemented by your letters dated April 13 and April 25, 1994, requesting an advisory opinion on behalf of Friends of Mike Parker for Congress ("the Committee") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the sub-lease of office space to the Committee by a corporation owned by the candidate and his spouse.

The Committee is the principal campaign committee for the reelection of Mike Parker to the Congressional seat from the Fourth District of Mississippi. Mr. Parker recently constructed a garage/office building on property within 100 feet of his residence in Brookhaven, Mississippi. This building was constructed with the funds of Mr. Parker and his wife, Rosemary Parker, on land held by them as joint tenants. The lower level consists of car parking spaces and a storage area for yard and garden tools. The upper level is office space.

Mr. and Mrs. Parker propose to lease the upper level to a corporate entity named M & R Services, Inc. ("M & R"), a Mississippi corporation licensed to conduct a variety of services including direct mail. Half of the corporation's stock is owned by Mr. Parker and the other half by Mrs. Parker.

In turn, M & R would sublease approximately 25 percent of the office space to Rosemary Parker, who is an attorney; this space would be used jointly by M & R Services and her law practice. M & R would sublease the remaining 75 percent of the upper level to the Committee for a one-year term, renewable each year thereafter. The rental would be at a rate equivalent to that charged for other office space similarly located and furnished. Utilities, including (but not limited to) water,

electricity, gas, and telephone (excluding long distance charges which would be paid by the responsible party) would be split on the same percentage basis, i.e., 75 percent by the Committee and 25 percent shared between the attorney's office and M & R. All office equipment, excluding items owned by the Committee, would be leased by M & R to the Committee as needed. The sublease agreement would be terminated when the Committee no longer uses the building for campaign purposes or at the time the Committee no longer exists.

You refer to the fact that, although the candidate may contribute without limit to his Congressional campaign, his wife's contribution limit is $1,000 per election under 2 U.S.C. 441a(a)(1)(A). Since Mrs. Parker is a joint owner of the property upon which the building is situated and hence a joint owner of the building, you express concern that a lease agreement might result in an excessive in-kind contribution from her. You also seek advice as to the applicability of any other provisions of the Act and Commission regulations to the proposed lease/sublease agreements.

The Commission has previously determined that, under the Act and Commission regulations, the candidate and the candidate's campaign committee have wide discretion in making expenditures to influence the candidate's election. Advisory Opinion 1993-1, 1988-13, and opinions cited therein. Such permissible uses have included a committee's rental of a storage shed from a candidate, and payment of rent to a candidate for use of office space in his residence. Advisory Opinions 1993-1, 1988-13, 1985-42, and 1983-1. In particular, your request is similar to that considered in Advisory Opinion 1988-13 where a candidate owned a duplex and proposed to sublease part of the unit he occupied to his campaign. The campaign would pay the telephone bill, its pro rata share of utilities, as well as the portion of the rent paid by the previous co-tenant.

Although Mr. and Mrs. Parker co-own the property in their individual capacities, they plan to lease the property to M & R, the corporation owned by them. M & R will then lease the property and equipment to the campaign. The statutory focus of these transactions, therefore, is no longer the $1,000 per election contribution limit in 2 U.S.C. 441a(a)(1)(A), but is instead the prohibition on corporate contributions. See Advisory Opinion 1990-9.

The Act forbids contributions by any corporation to a campaign for Federal office. 2 U.S.C. 441b(a); 11 CFR 114.2(b). The term "contribution" includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value ... to any candidate, campaign committee, or political party or organization" in connection with a Federal election. 2 U.S.C. 441b(b)(2); 11 CFR 114.1(a)(1). See 2 U.S.C. 431(8)(A)(i) and 11 CFR 100.7(a)(1). The phrase "anything of value" includes the provision of goods and services without charge, or at less than the usual and normal charge. 11 CFR 100.7(a)(1)(iii)(A). The regulations define "usual and normal charge," in part, to be the price of goods in the market from which they ordinarily would have been purchased at the time of the transaction. 11 CFR 100.7(a)(1)(iii)(B).

The payment of less than the usual and normal charge for the rent, utilities, and equipment would result in an in-kind contribution by the lessor, M & R. Advisory Opinion 1988-13. Since that lessor is a corporate entity, the campaign may not pay less than the usual and normal charge.

Two aspects of this leasing arrangement require Commission advice. You state that the sublease agreement is for a one year period, renewable each year thereafter, and would be terminated when the Committee no longer uses the building for campaign purposes or when the Committee ceases to exist. The Commission cautions that, if the Committee prematurely terminates its tenancy in the middle of a rental term, the Committee should pay the penalties or termination costs that are normally due in the Brookhaven area for such a termination. You also note that M & R would lease office equipment to the campaign as needed. The terms of such lease, including the duration, should be consistent with the usual and normal business practices for leasing equipment in the area. See Advisory Opinion 1992-19.

In concluding that a candidate and his or her campaign committee may exercise wide discretion in making expenditures, the Commission has also cautioned that they may not convert excess campaign funds to personal use. 2 U.S.C. 439a. Advisory Opinion 1993-1, and opinions cited therein. In order to comply with that prohibition, the Committee should not pay M & R more than the usual and normal charge and thus unduly augment the earnings of an asset owned by the candidate. See Advisory Opinion 1988-13.

Subject to the conditions stated in this opinion, the Commission concludes that your proposal for the rental of office space and equipment to the Committee, and the sharing of utility expenses is permitted under the Act and Commission regulations.[1/] The payments made for these expenses should be reported by the Committee as operating expenditures in accordance with the requirements of the Act and regulations. See 11 CFR 104.3(b)(2)(i).

The Commission expresses no opinion as to any application of the rules of the House of Representatives to your proposal, nor as to any tax ramifications, since those issues are outside the Commission's jurisdiction.

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.

For the Commission,

(signed)

Trevor Potter
Chairman

Enclosures (AOs 1993-1, 1992-19, 1990-9, 1988-13, 1985-42, and 1983-1)

1/ The Commission notes that it is presently considering new rules governing the conversion of campaign funds to personal use. See FEC Notice of Proposed Rulemaking, published in the Federal Register on August 30, 1993, at pages 45463 through 45467. The conclusion of this opinion may be modified or overruled by the adoption of a final rule, but the opinion may be relied upon until such a change is made. If a change is made, it will become effective prospectively on a specific date announced in the Federal Register, which the Commission

expects will follow the November 1994 elections. In addition, the Commission's written explanation and justification for its new rule will identify each past advisory opinion that is modified or superseded.