

June 24, 2003

Lawrence M. Norton, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

AOR 2003-19

Re: Democratic Congressional Campaign Committee

Dear Mr. Norton:

Pursuant to 2 U.S.C. § 437f (2003), this letter requests an advisory opinion from the Federal Election Commission on behalf of Democratic Congressional Campaign Committee, Inc. ("the DCCC"). The DCCC asks whether the Federal Election Campaign Act, as amended, 2 U.S.C. § 431 *et seq.*, allows it to accept proceeds from the sale of office equipment and furniture removed during the renovation of its headquarters if sold at fair market prices.

#### FACTUAL DISCUSSION

The DCCC is a political committee established and maintained by a national political party and a House campaign committee, as those terms are defined and used by 11 C.F.R. § 110.2(c)(2) (2003). It is a "national congressional campaign committee" under the Bipartisan Campaign Reform Act of 2002 ("BCRA"), and thus is generally prohibited from raising or spending funds not subject to the prohibitions, limitations and reporting requirements of the Act. *See, e.g.*, 2 U.S.C. § 441i(a)(1); 11 C.F.R. § 300.10(a).

In 2002, the DCCC agreed to participate in the renovation of the Democratic Party's headquarters building. The renovations began shortly after the November 5, 2002 general election. Because of the renovations, the DCCC anticipates that much of its old office equipment and furniture will be incompatible with the new space and with future plans.

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The DCCC would prefer to sell these items under normal commercial terms. While none has been appraised, the DCCC understands that similar used items are routinely bought and sold, and that a fair market price will be easily determinable. The DCCC's principal objective is to sell the items in arm's length transactions at a price most closely approximating fair market value. While it does not specifically intend to sell the items to corporations, labor organizations or other prohibited sources, it would make them available for sale to a wide array of potential purchasers, which may include some or all of these sources.

### LEGAL DISCUSSION

Ordinarily, payments to the DCCC are treated as contributions subject to the Act's source restrictions and contribution limits. The term "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal Office ..." 2 U.S.C. § 431(8)(A)(i).

However, in a series of advisory opinions, the Commission has concluded that a contribution does not result when a political committee makes isolated sales of assets originally purchased for its own use and with ascertainable fair market value. *See, e.g.*, Advisory Opinions 2002-14 (allowing national party committee to rent mailing list); 1992-24 (allowing sale of books); 1990-26 (allowing sale of computer); 1989-4 (allowing sale of mailing lists, computer hardware and used furniture); 1986-14 (allowing sale of van); 1985-1 (allowing sale of computer); 1981-53 (allowing sale of mailing list); 1979-24 (allowing sale of yard sign materials).

The most recent of the transactions approved in these advisory opinions was to be undertaken after BCRA's effective date, by a national party committee like the DCCC. In Advisory Opinion 2002-14, the Libertarian National Committee asked whether it may still rent or exchange its mailing list to corporations and other prohibited sources, BCRA notwithstanding. The Commission advised that it may, depending on "the nature of the lease transaction." *Id.* Specifically, the lease would have to meet the following conditions:

- It "must have an ascertainable fair market value in the market where it is leased." *Id.*

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- It "must be leased at the usual and normal charge in a bona fide, arm's length transaction, and ... be used in a commercially reasonable manner consistent with such an arm's length agreement." *Id.*
- It must be used by the lessee "in the ordinary course of the lessee's business, and in a manner consistent with the fair market price paid." *Id.*

The Commission advised the party committee that the payments received "would be considered to be Federal funds usable by the [party] for any lawful purpose" and would "be reported in the category of 'Other Receipts.'" *Id.*

The Commission's reasoning in Advisory Opinion 2002-14 was consistent with other, pre-BCRA opinions allowing political committees to sell surplus personal property originally purchased for their own use. For example, in Advisory Opinion 1990-26, the Commission allowed Nebraska Congresswoman Virginia Smith's campaign to sell an IBM personal computer for its normal and usual charge without receiving a contribution. The Commission noted that the campaign had purchased the computer "for its own campaign use," that the computer had an ascertainable value, and that the price would not exceed the usual and normal charge. Advisory Opinion 1990-26.

Similarly, in Advisory Opinion 1989-4, the Commission allowed California Senator Pete Wilson's campaign to sell mailing lists, computer hardware and used furniture to his California gubernatorial campaign. The Commission again relied on the facts that the seller had originally purchased the assets for its own particular use, that the assets had an ascertainable market value, and that the price would not exceed the usual and normal charge for the market. *Id.*

Finally, in Advisory Opinion 1986-14, the Commission allowed the committee of Indiana Congressman Dan Burton to sell a van that had become unsuitable for campaign use. Advisory Opinion 1986-14 was the first time the Commission had allowed such a sale by a continuing political entity. As the Commission later affirmed, "the legal character of such isolated sales of assets by political committees is not contingent upon committees pursuing debt retirement or termination." Advisory Opinion 1989-4 n.3.

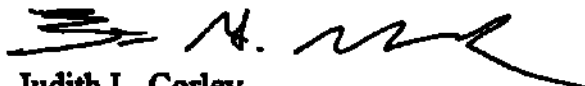
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The facts in each of these opinions were distinguishable from those in which the Commission had disallowed proposed sales. For example, the approved sales were not "simply another form of fundraising for political purposes." Advisory Opinion 1986-14. Nor did they involve "political campaign fundraising items, or uniquely developed political campaign materials." *Id.* (citing Advisory Opinions 1980-70, 1980-34, 1980-19 and 1979-76).

The DCCC's proposed sales fall squarely in the category of those approved by the Commission before. Each of the items to be sold was purchased for the DCCC's own use, and was in fact used until becoming unsuitable. None was uniquely developed for fundraising purposes. Each has an ascertainable fair market value. The DCCC proposes to sell them in bona fide, arm's length transactions, to purchasers who would use them in the ordinary course of business. Disapproving the proposed sales would depart from the Commission's reasoning in prior opinions, including the one just very recently issued to the Libertarian Party for its post-BCRA conduct. See Advisory Opinion 2002-14.

For these reasons, the Committee respectfully requests that the proposed transactions be allowed.

Very truly yours,



Judith L. Corley  
Brian G. Svoboda  
Counsel to the DCCC