

29 JUL 1976

RE: AOR 1976-30

John Papini, Treasurer  
Pete Stark Re-Election Committee  
Post Office Box 5303  
Oakland, California 94650

Dear Mr. Papini:

This letter responds further to your request of March 9, 1976, for an opinion as to the legality of a reduction of the cost for using corporate facilities to hold a fundraising function.

We regret the delay in answering your inquiry, but, subsequent to the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1 (1976), the Commission was required to suspend the issuance of advisory opinions until after the date of its reconstitution. Moreover, 2 U.S.C. §437f, as amended by the Federal Election Campaign Act Amendments of 1976, now requires the Commission to formulate its rules of general applicability by proposing formal regulations, rather than by the advisory opinion process. Accordingly, the Commission has published a Notice of Proposed Rulemaking inviting public comment and held hearings relating thereto on June 7 through 11. A copy of the Notice is enclosed. Please note that significant changes have been made to those proposals. The final version will be published in the Federal Register when sent to Congress.

From your recent communication, the Commission understands that the Pete Stark Re-Election Committee conducted a fundraising party at a theatre owned by a corporation on April 11, 1976. The corporation offered the facilities at a reduction per seat comparable to its established practice for non-political theatre parties. Pending our decision, the Pete Stark Re-Election Committee paid the reduced rate with the intent to immediately reimburse for the difference should the Commission find this necessary.

Just recently the Commission approved a redraft of the proposed regulation relating to the use or rental of corporate facilities. A copy of the relevant §114.9(d) is enclosed for your information. The effect of that language is that if the same reduction per person is offered in the normal course of business to non-political gatherings of comparable size and duration, the theatre corporation would be considered to have received from the Stark Re-Election Committee the "amount of the normal and usual rental charge, as defined in §100.4(a)(1)(iii)(B)," and would not be regarded as having made an "in-kind" contribution prohibited by 2 U.S.C. §441b. The Commission may, of course, audit the theatre's records to determine that the reductions extended to the Pete

Stark Re-Election Committee are commensurate in kind and degree to those offered by the corporation in connection with any typical theatre party.

This response relates to your opinion request but may be regarded as informational only and not as an advisory opinion since it is based in part on proposed regulations of the Commission which must be submitted to Congress. The proposed regulations may be prescribed in final form by the Commission only if not disapproved by either the House or the Senate within 30 legislative days from the date received by them. 2 U.S.C. §438(c). It is the Commission's view that no enforcement or compliance action should be initiated in this matter if the actions of the political committee you represent conform to the conclusions and views stated in this letter.

Sincerely yours,

(signed)  
Vernon W. Thomson  
Chairman for the  
Federal Election Commission

Enclosure