



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 14, 1984

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-39

The Honorable Mike Synar  
1713 Longworth House Office Building  
Washington, D.C. 20515

Dear Congressman Synar:

This responds to your letter of August 6, 1984, as supplemented by letter dated August 22, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to your proposed use of a mailing list owned by the "Alliance for Energy Security."

Your letter states that the Alliance for Energy Security (established by the National Gas Supply Association) sent pamphlets to its members in your Congressional district. You claim that these pamphlets distorted your legislative record regarding natural gas price decontrol by implying that you support Federal regulation of natural gas prices. You indicate that you have in fact continually supported the decontrol of natural gas prices, and suggest that the Alliance for Energy Security sent the pamphlets implying criticism of your record to your constituents by mistake.

You have submitted a draft letter that you propose to mail. This letter refers to the prior Alliance mailing and outlines your Congressional committee activities on decontrol legislation. It makes no reference to any election, to your candidate status, to any political party, or to campaign financing matters. You propose to make this mailing after the November 1984 election under your franking privileges. See 39 U.S.C. 3210. Your request explains that the Alliance mailing list will not be retained by your office, will not be made available to your campaign committee, and will be used solely for the mailing described above.

You ask whether your use of the mailing list of the Alliance for Energy Security to send a letter, clarifying your legislative record to individuals who may have received the allegedly misleading pamphlets, would be an in-kind contribution to your campaign under the Act and Commission regulations. 2 U.S.C. 431(8) and 11 CFR 100.7(a)(1)(iii).

The Act provides that a "contribution" may include the gift or loan of "anything of value" given for the purpose of influencing an election for Federal office. 2 U.S.C. 431(8)(A)(i).

Commission regulations provide that the term "anything of value" includes all in-kind contributions, and these may include membership lists or mailing lists. 11 CFR 100.7(a)(1)(iii). If goods or services are provided at less than the usual or normal charge, then the difference between the amount actually charged and the usual and normal charge is an in-kind contribution.

In Advisory Opinion 1977-10 the Commission considered the donation of a mailing list for use in franked mailings. The Commission stated that no in-kind contribution would result where use of a mailing list is given only for the purpose of assisting a Federal officeholder to communicate with constituents via a frankable mailing and not for the purpose of influencing a Federal election. See Advisory Opinion 1977-10. In other specific situations involving the activities of Members of Congress in their capacity as officeholders, the Commission has not required that donated items or services be treated as campaign contributions. See, for example, Advisory Opinion 1980-89. Based on these opinions the Commission concludes that your use of the Alliance for Energy Security's mailing list for the described mailing would not result in an in-kind contribution under the Act or regulations.

The Commission expresses no opinion regarding possible application of House rules or other Federal statutes to this activity since any issues arising under those provisions are outside its jurisdiction.

This response constitutes an advisory opinion concerning 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.

Sincerely yours,

(signed)

Lee Ann Elliott  
Chairman for the  
Federal Election Commission

Enclosures (AOs 1977-10 and 1980-89)