

Select Committee on Ethics
Advisory Opinion No. 6¹

SUBJECT

Acceptance of in-kind services for official purposes.

REASON FOR ISSUANCE

House Rule 24 provides that no funds may be paid into any unofficial office account subsequent to March 2, 1977, and that such accounts must be abolished by January 3, 1978. The definition of an unofficial office account included in the new Rule focuses on the most common form, *i.e.*, a privately subsidized account used to supplement official allowances.

The legislative history of Rule 24 refers to an unofficial office account as a fund, repository, or process whereby funds are received or expended. The reasons for adopting new Rule 24, as presented in the Financial Ethics report of the Commission on Administrative Review (H. Doc. 95-73, February 14, 1977), emphasize that eliminating private support of the public's business should be the primary objective of a new Rule.

The Commission strongly believes that private funds should be used only for politically-related purposes. Official allowances should reflect the necessary cost of official expenses. . . . To suggest otherwise would be to accept or condone the continuation of the present system [of unofficial office accounts] which, at the very least, allows for the appearance of impropriety, and at worst, creates a climate for potential "influence pedaling" through private financing of official expenses of Members of Congress.

Although it is clear that acceptance of monetary contributions to sustain such accounts was perceived as conduct to be prohibited by the new Rule, questions have been raised concerning the application of Rule 24 to acceptance of certain in-kind services (*e.g.*, office supplies and equipment, district office space, etc.) and whether such items will be treated differently than monetary contributions for purposes of the Rule 24 prohibition.

The Select Committee finds that no distinction can be made between in-kind and monetary contributions. Whether the private support alluded to in the Commission's report is in the form of a monetary contribution or in the form of an in-

¹ Issued on May, 9, 1977. This opinion has been updated, *inter alia*, to reflect the renumbering of the House Rules in the 106th and 107th Congresses.

kind service is not relevant in view of the intended prohibition against the private financing of official business. Moreover, it can hardly be argued that donation of in-kind services is any less an infusion of private support for official business than is the donation of money.

At least two precedents for treating in-kind services as monetary contributions are found in regulations promulgated by the Federal Election Commission (FEC) and the Internal Revenue Service (IRS). Those regulations require the inclusion of in-kind donations as contributions to unofficial office accounts, thus confirming the Select Committee's understanding that money and in-kind contributions should be treated the same.

The FEC defines an "office account" (unofficial office account) as "an account established for the purposes of supporting the activities of a Federal or State officeholder which contains campaign funds and funds donated. . . ." (11 CFR 113.1(b)). A contribution includes a thing of value, including in-kind services. (11 CFR 100.51(a), 100.52 (d)(1)). Therefore, according to the FEC definitions, unofficial office accounts may encompass in-kind services or resources.

Similarly, the IRS considers the donation of in-kind resources as a "contribution," applying the criterion of "anything of value." The IRS treats the contribution of in-kind services or resources used for official purposes as personal income to the Member, just as it treats contributions to unofficial office accounts.

In sum, the Select Committee finds that for the purposes of applying Rule 24, no logical distinction can be drawn between the private contribution of in-kind services and the private contribution of money, and that both perpetuate the very kind of unofficial office accounts and practices that are prohibited by House Rule 24.

Equally clear, however, is that various in-kind services and functions provided by federal, state and local government agencies do not fall in the same category as private donations of money or in-kind services. Thus, the provision of office space or rooms for constituent meetings, etc., by a state or local government would not be prohibited by application of this Rule. Of course, the occasional use of privately owned meeting space where no other appropriate public accommodations are reasonably available for meeting constituents does not fall within the proscriptions of the new Rule.

Additionally, application of the Rule would not prohibit a Member from continued participation with various educational intern, fellowship, or volunteer programs. Members have long recognized that there is an inherent educational and professional benefit in interns, fellows, and volunteers viewing first hand the Legislative Branch of government, and that there are compelling public policy considerations for encouraging such programs. There is nothing in the legislative history that suggests an intent to discontinue these programs, nor has there surfaced

any evidence of abuses resulting from the infusion of private money into public business causing conflict of interest or other situations intended to be prohibited by the New Rule. The Select Committee believes these programs are of primary benefit to the persons involved and notes that interns, fellows, and volunteers are not on the payroll of the House, nor are they considered to be employees of the House of Representatives. Therefore, this interpretation of Rule 24 does not apply to intern programs, provided the internships are primarily for educational purposes and do not give undue advantage to special interest groups or others with a direct interest in legislation.

However, it is clear that a Member would be violating the intent and the spirit of House Rule 24 if he attempted to supplement his official allowance by raising, receiving, or disbursing contributions to hire or support interns in his office. Therefore, it follows that a Member and his staff are prohibited from personally raising, receiving, or disbursing contributions used to support an educational intern, fellowship, or volunteer program. This holding represents the only effective method for restricting the potential to collect and maintain, directly or indirectly, unofficial funds for supplementing staff assistance and the officially provided clerk-hire allowance.

SUMMARY OPINION

For purposes of House Rule 24, the private contribution of in-kind services for official purposes is prohibited. However, Rule 24 does not apply to services provided by federal, state and local government agencies, or to the occasional use of privately-owned meeting space where not public accommodations are reasonably available for meeting with constituents. Nor does Rule 24 apply to interns or volunteers in a Member's office, based on the understanding that such intern programs are primarily of educational benefit to the intern and do not give undue advantage to special interest groups. However, Members and their staffs may not personally raise, receive or disburse any private contributions for intern programs associated with their offices.