

ETHICS INTERPRETATION EI-1991-004
ISSUED JANUARY 9, 1992

We have received your request, pursuant to 74 O.S. 1991, § 4206 (A) (8), for an ethics interpretation as to the following:

1. *Are items to an auction, held on behalf of a candidate, to be reported on a campaign report as in-kind or cash contributions?*
2. *Do donated items, whether in-kind or cash, fall within the same reporting requirements as other contributions, i.e. must they be itemized in the report if they exceed \$200.00 in value?*
3. *How should the value of donated items be determined--the actual value of the donated item or the value the item brings at auction?*
4. *Will it be necessary to give donors receipts for donated items? If so, should the receipt reflect the actual value of the item, or the amount the item brings at auction?*
5. *Is it required to give people who purchase an item at auction a receipt reflecting the amount of their donations?*
6. *If donors are to be shown on reports as making cash contributions, and persons who purchase those same items at auction are to be shown on reports as making cash contributions, the same items will be shown as two contributions. How can this be avoided?*

The Ethics Commission finds as follows:

The definition of contribution contained in 74 O.S. 1991, § 4202 (11), in pertinent part, reads:

"Contribution" means and includes any money, property, or in-kind services, including but not limited to, printing or engraving, radio or television time, billboards, advertising, subscription, forgiveness of indebtedness, personal or professional services or any other thing of value whatsoever which is given or loaned to be used in a campaign.

[emphasis added]

Reports of contributions must, under 74 O.S. 1991, § 4211 (C), include:

the sources of each contribution which exceeds Two Hundred Dollars (\$200.00) in the aggregate during the campaign...

Subsection (D) of the same section requires the reporting of such contributions:

...whenever the aggregate value or amount of such contributions and the theretofore unreported contributions to such candidate or committee exceeds Two Hundred Dollars.

It is, therefore, the ethics interpretation of the Commission, as voted on at its regular meeting held on January 9, 1992, that:

1. Persons who donate articles for sale at auctions are making an in-kind contribution to the campaign of the article itself. The amount of the in-kind contribution is the "fair market value" of the donated article. "Fair market value" is defined as the amount a willing buyer would pay to a willing seller for the article in the market place. The person donating the item should be requested to establish this value in advance of the auction and provide same to the committee's agent.
2. If the fair market value of the article is in excess of \$200.00, the following information must be included on the campaign contributions and expenditures report: the date the article was accepted, the name and address of the person donating it, a description, and the fair market value of same.
3. If the item is sold for less than fair market value, the value (and the in-kind contribution attributed to the donor) is reduced to the actual sale price.
4. A record should be kept of each item's fair market value and sale price. The buyer need not be identified unless the buyer pays more than the fair market value. In such instance, the buyer would be making a contribution of the amount paid in excess of the fair market value. If the excess, together with any other contributions by the buyer, exceed \$200.00, the date of the purchase, the name and address of the buyer, and the excess is reported as a cash contribution on the campaign report.

Please be advised that ethics interpretations by law will be published by this Commission without identifying petitioners.