

FEDERAL ELECTION
COMMISSION
SECRETARIAT

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

JUN -2 2005

MEMORANDUM

AGENDA ITEM

For Meeting of: 6-09-05

TO: The Commission

THROUGH: James A. Pehrkon *JAP*
Staff Director

FROM: James A. Kahl *JAK*
Deputy General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Brad C. Deutsch *BCD*
Assistant General Counsel

Esa L. Sferra *ELS*
Attorney

SUBJECT: Draft AO 2005-05

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for June 9, 2005.

Attachment

1 ADVISORY OPINION 2005-05

2

3

4 Mr. Rex Linder

5 Friends of Ray LaHood

6 4238 N. Knoxville Avenue

7 Peoria, Illinois 61614

8

9 Dear Mr. Linder:

DRAFT

10 We are responding to your advisory opinion request on behalf of Representative
11 Ray LaHood regarding the application of the Act and Commission regulations to
12 proposed uses of funds remaining in the account of a State committee that was created to
13 finance Representative LaHood's "recent interest in exploring his candidacy for
14 Governor of the State of Illinois." The Commission concludes that if Representative
15 LaHood decides not to become a gubernatorial candidate, he or his State exploratory
16 committee may use the remaining funds in the exploratory committee's account to make
17 donations to State and local candidates and to the non-Federal accounts of State and local
18 Republican party organizations. Additionally, Representative LaHood or his State
19 exploratory committee may make refunds to donors, and may make donations to entities
20 organized under section 501(c)(3) of the Internal Revenue Code of 1986 that do not
21 engage in any election activity.

22 ***Background***

23 The facts of this request are presented in your letter received on April 21, 2005
24 and in your e-mail communications dated April 26 and 29, 2005.

25 Representative Ray LaHood is the U.S. Representative from the 18th District of
26 Illinois and a candidate for re-election to the U.S. House of Representatives in 2006. His
27 principal campaign committee for re-election is Friends of Ray LaHood.

1 Representative LaHood is also currently interested in exploring a candidacy for
2 Governor of Illinois.¹ Accordingly, Representative LaHood has established Ray LaHood
3 for Illinois (“LaHood State Committee”). The LaHood State Committee is registered
4 with the State of Illinois and has raised funds to finance his exploratory campaign. You
5 represent that all funds raised by, and for, the LaHood State Committee have been in
6 amounts and from sources that are in compliance with the limitations and prohibitions of
7 the Federal Election Campaign Act of 1971, as amended (the “Act”).

8 ***Questions Presented***
9

10 *If Representative LaHood decides not to announce a candidacy for Governor of*
11 *Illinois, may he use the remaining funds raised and deposited into the LaHood State*
12 *Committee account for:*

- 13 1. *Donations to State and local candidates;*
- 14 2. *Donations to the non-Federal accounts of State and local Republican party*
15 *organizations;*
- 16 3. *Refunds to donors; or*
- 17 4. *Donations to 501(c)(3) organizations that do not engage in any election*
18 *activity?*

19
20 ***Legal Analysis and Conclusions***

21 As amended by the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Public
22 Law 107-155, 116 Stat. 61 (2002), the Act regulates certain actions of Federal candidates
23 and officeholders, their agents, and entities directly or indirectly established, financed,
24 maintained, or controlled by, or acting on behalf of, Federal candidates or officeholders
25 (collectively “covered persons”), when they raise or spend funds in connection with
26 either Federal or non-Federal elections. 2 U.S.C. 441i(e); 11 CFR 300.60 through

¹ The Illinois gubernatorial primary election will take place on March 21, 2006. 10 ILCS (Illinois Compiled Statutes) 5/2A-1.1 (2005) (Illinois even-numbered year primaries are held on the third Tuesday in March). The earliest candidates can qualify to have their names placed on the primary ballot is December 2005. 10 ILCS 5/7-12. (2005) (Illinois petitions for nomination must be filed no earlier than 99 and no later than 92 days prior to the date of the primary).

1 300.65. In pertinent part, BCRA, and the Commission regulations implementing BCRA,
2 prohibit covered persons from soliciting, receiving, directing, transferring, spending, or
3 disbursing funds in connection with any non-Federal election unless the funds do not
4 exceed the amounts permitted with respect to contributions to Federal candidates and
5 political committees under 2 U.S.C. 441a(a)(1), (2), and (3), and are not from sources
6 prohibited by the Act from making contributions in connection with an election for
7 Federal office.² 2 U.S.C. 441i(e)(1)(B); 11 CFR 300.62; *see also* 2 U.S.C. 441a, 441b,
8 441c, 441e, and 441f. Commission regulations also require such funds to be in amounts
9 and from sources that are consistent with State law. 11 CFR 300.62.

10 Representative LaHood is both a Federal candidate and a Federal officeholder.
11 Additionally, the LaHood State Committee is an entity that is directly established,
12 financed, maintained, or controlled by him. Therefore, if any of the proposed uses for
13 these funds are in connection with a non-Federal election, then these funds must be raised
14 and spent in accordance with 2 U.S.C. 441i(e)(1)(B), or the exception found in section
15 441i(e)(2). *See also* 11 CFR 300.62 and 300.63.

16 *Questions 1 and 2*

17 *May Representative LaHood use the remaining funds in the LaHood State*
18 *Committee account to make donations to State and local candidates and to the non-*
19 *Federal accounts of State and local Republican Party organizations?*

20

² Although, as indicated above, the requestor has represented that all funds raised by, and for, the LaHood State Committee have been in amounts and from sources that are in compliance with the limitations and prohibitions of the Act, section 441i(e)(2) of the Act specifically provides an exception that permits Federal candidates or officeholders who are also candidates for a State or local office to solicit, receive, and spend funds outside the limitations and prohibitions of the Act if the funds are solicited, received and spent solely in connection with their State or local campaigns and refer only to themselves, their opponents, or both. 2 U.S.C. 441i(e)(2). Under Commission regulations at 11 CFR 300.63, this exception is applicable if the solicitation, receipt or spending of funds is permitted under State law.

1 Yes, Representative LaHood may use those funds to make donations to non-
2 Federal candidates and to these non-Federal accounts, provided such donations are
3 consistent with Illinois law.

4 Donations to a State or local candidate or to the non-Federal account of any State
5 or local Republican party organization would include transfers, spending, or
6 disbursements of funds in connection with a non-Federal election, which under 2 U.S.C.
7 441i(e)(1)(B) and 11 CFR 300.62 must consist only of funds that are not in excess of the
8 amounts permitted with respect to contributions to Federal candidates and political
9 committees and are not from prohibited sources.

10 You have represented that the LaHood State Committee has accepted donations
11 only in accordance with the Act's limitations and prohibitions and therefore are not in
12 excess of the amounts permitted with respect to Federal candidates and are not from
13 prohibited sources. Accordingly, all the funds in the LaHood State Committee account
14 are in compliance with the restrictions found in 2 U.S.C. 441i(e)(1)(B) and 11 CFR
15 300.62, and Representative LaHood or the LaHood State Committee may donate such
16 funds to State and local candidates or to the non-Federal accounts of State and local
17 Republican party organizations without further restriction under 2 U.S.C. 441i(e)(1)(B)
18 and 11 CFR 300.62, provided that such donations are consistent with Illinois law.

19 *Question 3*

20 *May Representative LaHood use the remaining funds in the LaHood State*
21 *Committee account to make refunds to donors?*

22
23 Yes, Representative LaHood may use those funds to make refunds to donors,
24 provided such refunds are consistent with Illinois law.

1 As discussed above, the funds in the LaHood State Committee consist only of
2 donations that were raised in amounts permitted with respect to Federal candidates and
3 are not from prohibited sources. Therefore, any such refund would be of funds that are
4 already in compliance with section 441i(e)(1)(B) of the Act. Accordingly,
5 Representative LaHood or the LaHood State Committee may use the unexpended funds
6 in the LaHood State Committee account to make refunds, provided that no such refund to
7 a person exceeds the amount actually donated by that person and that such refund is
8 consistent with Illinois law.

9 *Question 4*

10 *May Representative LaHood use the remaining funds in the LaHood State*
11 *Committee account to make donations to section 501(c)(3) organizations that do not*
12 *conduct any election activity?*

13
14 Yes, Representative LaHood may use those funds to make donations to section
15 501(c)(3) organizations that do not conduct any election activity, provided such donations
16 are consistent with Illinois law.

17 Donations to section 501(c)(3) organizations that conduct no election activity of
18 any kind do not involve transfers, spending, or disbursements of funds in connection with
19 a Federal or non-Federal election and therefore do not fall within the restrictions found in
20 2 U.S.C. 441i(e)(1). *See* Advisory Opinion 2003-32.

21 The Commission expresses no opinion regarding the tax ramifications, if any, of
22 the proposed activities under the Internal Revenue Code because those issues are not
23 within its jurisdiction.

24 This response constitutes an advisory opinion concerning the application of the
25 Act and Commission regulations to the specific transaction or activity set forth in your
26 request. *See* 2 U.S.C. 437f. The Commission emphasizes that if there is a change in any

1 of the facts or assumptions presented, and such facts or assumptions are material to a
2 conclusion presented in this advisory opinion, then the requestor may not rely on that
3 conclusion as support for its proposed activity.

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Sincerely,

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Scott E. Thomas
Chairman

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Enclosure (AO 2003-32)