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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

February 28, 2006

MEMORANDUM

**AGENDA ITEM**

For Meeting of: 03-09-06

TO: The Commission

THROUGH: Robert J. Costa *RC*  
Acting Staff Director

FROM: Lawrence H. Norton *LH*  
General Counsel

Rosemary C. Smith *RC*  
Associate General Counsel

Mai T. Dinh *MD*  
Assistant General Counsel

Anthony T. Buckley *ATB*  
Attorney

Subject: Draft AO 2006-01

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for March 9, 2006.

Attachment

1 ADVISORY OPINION 2006-1

2

3 Mr. Douglas Boxer, Committee Director

**DRAFT**

4 Pac for a Change

5 300 Frank Ogawa Plaza

6 Suite 500

7 Oakland, CA 94612

8

9 Dear Mr. Boxer:

10 We are responding to your advisory opinion request on behalf of Pac for a Change  
11 (“the Committee”) concerning the application of the Federal Election Campaign Act of  
12 1971, as amended (the “Act”), and Commission regulations to the Committee’s purchase  
13 of books written by a Federal officeholder at a discounted rate from the publisher, and the  
14 Committee’s use of those books as a gift for persons who raise at least \$100 for the  
15 Committee. The Commission concludes that the Committee may purchase the books at  
16 the discounted rate offered by the publisher.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letter received on  
19 January 11, 2006.

20 The Committee is a non-connected multicandidate committee registered with the  
21 Commission. The Committee proposes to purchase a sizeable number of copies of “A  
22 Time to Run,” a novel written by Senator Barbara Boxer, from the publisher, Chronicle  
23 Books, a limited liability company. Chronicle Books will charge the Committee for the  
24 books at a price that is less than the suggested retail price, but that is the standard price  
25 Chronicle Books charges other large purchasers. Senator Boxer will sign each book, and  
26 the books will then be offered to any person who raises at least \$100 for the Committee  
27 in a certain time period.

1 ***Question Presented***

2 *May the Committee purchase copies of Senator Boxer's book from the publisher*  
3 *at the discounted price the publisher charges other large purchasers?*

4 ***Legal Analysis and Conclusions***

5 The Commission concludes that the Committee may purchase from the publisher  
6 copies of "A Time to Run" at the same discounted rate paid by other large purchasers.  
7 This conclusion is based on the Committee qualifying for the discounted price as any  
8 other bulk purchaser would qualify.

9 The Committee's purchase of the books at a discounted rate raises the issue of  
10 whether the publisher is making an in-kind contribution to the Committee. The term  
11 "contribution" includes giving "anything of value" for the purpose of influencing an  
12 election. 2 U.S.C. 431(8)(A)(i) and 441b(b)(2); 11 CFR 100.52(a) and 114.1(a)(1). The  
13 term "anything of value" includes the provision of goods or services at less than the usual  
14 and normal charge. 11 CFR 100.52(d)(1). The "usual and normal charge" for goods  
15 means the price of those goods in the market from which they ordinarily would have been  
16 purchased at the time of the contribution. 11 CFR 100.52(d)(2). In the past, the  
17 Commission has concluded that the purchase of goods or services at a discounted rate  
18 does not constitute a contribution when the discounted items are made available in the  
19 ordinary course of business and on the same terms and conditions offered to the vendor's  
20 other customers that are not political committees. *See* Advisory Opinions 2004-18, 2001-  
21 08, 1996-02, 1995-46, 1994-10, and 1993-20. According to your request, the Committee  
22 will pay the usual and normal charge for this type of bulk purchase from the publisher.

1 Thus the publisher would not be making an in-kind contribution to the Committee in this  
2 transaction.

3 Based on the foregoing analysis, the proposed activity is permissible under the  
4 Act and Commission regulations. The amounts spent by the Committee for the purchase  
5 of the books should be reported as operating expenditures for the 2006 election cycle.  
6 2 U.S.C. 434(b)(4)(A) and (5)(A); 11 CFR 104.3(b)(3)(i).

7 This response constitutes an advisory opinion concerning the application of the  
8 Act and Commission regulations to the specific transaction or activity set forth in your  
9 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any  
10 of the facts or assumptions presented, and such facts or assumptions are material to a  
11 conclusion presented in this advisory opinion, then the requestor may not rely on that  
12 conclusion as support for its proposed activity.

13  
14 Sincerely,

15  
16  
17  
18 Michael E. Toner  
19 Chairman  
20

21  
22 Enclosures (Advisory Opinions 2004-18, 2001-08, 1996-02, 1995-46, 1994-10, and  
23 1993-20)