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October 3, 2007

AGENDA ITEM
For Meeting of: 10-11-07

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *TPD*
General Counsel

Rosemary C. Smith *ACS*
Associate General Counsel

Ron B. Katwan *RBK*
Assistant General Counsel

Albert J. Kiss *ATK*
Attorney

Subject: Draft AO 2007-18

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 11, 2007.

Attachment

1 ADVISORY OPINION 2007-18

2
3 Phu Huynh, Esq.
4 Oldaker, Biden & Belair, LLP
5 818 Connecticut Ave., N.W.
6 Suite 1100
7 Washington, D.C. 20006

DRAFT

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9 Dear Mr. Huynh:

10 We are responding to your advisory opinion request on behalf of Rangel for
11 Congress (the "Committee") and the National Leadership PAC, concerning the
12 application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and
13 Commission regulations to the use of Committee funds or, alternatively, National
14 Leadership PAC funds, to pay for the commissioning of an official portrait of
15 Representative Charles Rangel. The portrait would be donated to the U.S. House of
16 Representatives.

17 The Commission concludes that the Committee may use its funds to pay for the
18 portrait of Representative Rangel because the U.S. House of Representatives is an
19 organization described in section 170(c) of Title 26 and because payment for the portrait
20 would not financially benefit Representative Rangel or any member of his family. The
21 Commission also concludes that the National Leadership PAC may use its funds to pay
22 for the portrait of Representative Rangel because the payment would not be an in-kind
23 contribution for the purpose of influencing any election.

24 ***Background***

25 The facts presented in this advisory opinion are based on your letter received on
26 August 21, 2007, and a telephone call of September 27, 2007.

1 The Committee is the principal campaign committee of Representative Charles
2 Rangel of New York. Representative Rangel is Chairman of the U.S. House of
3 Representatives Committee on Ways and Means. The National Leadership PAC is
4 Representative Rangel's "leadership PAC" and is a nonconnected multicandidate
5 committee.

6 The U.S. House of Representatives traditionally honors committee chairs by
7 placing their portraits in the committee hearing rooms. The House Committee on Ways
8 & Means will commission the portrait for donation to the U.S. House of Representatives.
9 The Committee or the National Leadership PAC will pay the entire cost of the portrait,
10 estimated to be \$64,500, and neither the Committee nor the National Leadership PAC
11 will solicit or receive funds to pay for the portrait. This cost reflects a three-quarter body
12 length size, important details, and a custom frame, and the requestor represents that this
13 amount is commensurate with the usual and normal charge for similar works by artists of
14 similar renown. The artist receiving the commission is not a member of Representative
15 Rangel's family. The portrait will become the official property of the House in
16 perpetuity (*i.e.*, the portrait will not be transferred or sold to any other person or
17 organization) and will be donated to the House exclusively for public purposes.

18 ***Question Presented***

19 *May the Committee or, alternatively, the National Leadership PAC, use its funds*
20 *to pay for a portrait of Representative Rangel that will be donated to the U.S. House of*
21 *Representatives?*

1 ***Legal Analysis and Conclusions***

2 Yes, both the Committee and the National Leadership PAC may use their funds to
3 pay for a portrait of Representative Rangel that will be donated to the U.S. House of
4 Representatives.

5 The Act provides that campaign funds may be donated to any organization
6 described in 26 U.S.C. 170(c), but may not be “converted by any person to personal use.”
7 2 U.S.C. 439a(a)(3) and (b)(1); *see also* 11 CFR 113.1(g)(2) and 113.2(b). Commission
8 regulations provide that donations from campaign funds to section 170(c) organizations
9 are not personal use, unless the candidate receives compensation from the organization
10 before that organization has expended, for purposes unrelated to the candidate’s personal
11 benefit, the entire amount donated. 11 CFR 113.1(g)(2).

12 Previous advisory opinions have considered the application of the Act and
13 Commission regulations to other factual situations somewhat similar to the circumstances
14 presented here. For example, in Advisory Opinion 1995-18 (Leach), the Chairman of the
15 House Committee on Banking and Financial Services proposed to commission a portrait
16 of the former Chairman of what was then the House Committee on Banking, Finance and
17 Urban Affairs as a permissible donation of campaign funds to the U.S. House of
18 Representatives. The Commission determined that the proposed donation was
19 permissible under the Act and Commission regulations.

20 In determining whether a proposed use of a candidate’s campaign funds is
21 permissible, the Commission considers two factors. First, the Commission considers
22 whether the recipient organization qualifies as an entity described in 26 U.S.C. 170(c).

1 *See, e.g.*, Advisory Opinions 2005-6 (McInnis) (not-for-profit organization seeking
2 qualification under 26 U.S.C. 501(c)(3)) and 1995-18 (Leach) (U.S. House of
3 Representatives). In Advisory Opinion 1995-18 (Leach), the Commission found that the
4 U.S. House of Representatives qualifies as a “an instrumentality of the United States,
5 which is . . . an ‘organization described in section 170(c) of title 26,’ to the extent that the
6 donation is made for exclusively public purposes.” Here, similar to the facts in Advisory
7 Opinion 1995-18 (Leach), the portrait of Representative Rangel will be donated to the
8 U.S. House of Representatives exclusively for public purposes and will become the
9 property of the House in perpetuity.

10 Second, the Commission considers whether the proposed payment for a portrait of
11 Representative Rangel that would be donated to the U.S. House of Representatives would
12 financially benefit Representative Rangel or a member of his family. *See* 11 CFR
13 113.1(g)(2); *see also* Advisory Opinion 2005-6 (McInnis). While Representative Rangel
14 is employed by the U.S. House of Representatives and receives compensation from the
15 House for his services, no part of the payment for the portrait by the Committee or by the
16 National Leadership PAC would benefit either Representative Rangel or his family
17 financially. *See* Advisory Opinion 1983-27 (McDaniel) (an authorized committee may
18 donate excess campaign funds to an educational foundation partly because no donated
19 funds would accrue to the candidate’s benefit), *cited in* Explanation and Justification for
20 Final Rules on Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7869 (Feb. 9, 1995).
21 Under these circumstances, the Commission concludes that the Committee’s use of
22 campaign funds to pay for the cost of the portrait is permissible.

1 Similarly, the National Leadership PAC may pay for the portrait commission.
2 This would not be an in-kind contribution to Rangel for Congress because such a
3 payment would be exclusively to create a portrait to be donated to a section 170(c)
4 organization and thus would not be for the purpose of influencing an election for Federal
5 office. *See* 2 U.S.C. 431(8)(A)(i); 11 CFR 100.52(a).

6 Both the Committee and the National Leadership PAC are required to report all
7 disbursements of funds, including any payment for a portrait, and to maintain appropriate
8 documentation of disbursements. *See* 2 U.S.C. 434(b)(4) and (b)(5); 11 CFR 104.3(b). A
9 payment for a portrait would be reportable as “other disbursements.” 2 U.S.C.
10 434(b)(4)(G) and 434(b)(4)(H)(v); 11 CFR 104.3(b)(1)(ix) and 104.3(b)(2)(vi).

11 The Commission expresses no opinion regarding any tax ramifications of the
12 proposed activity and no opinion regarding application of the rules of the House of
13 Representatives to the proposed activity because those questions are not within the
14 Commission’s jurisdiction.

15 This response constitutes an advisory opinion concerning the application of the
16 Act and Commission regulations to the specific transaction or activity set forth in your
17 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
18 of the facts or assumptions presented, and such facts or assumptions are material to a
19 conclusion presented in this advisory opinion, then the requestor may not rely on that
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1 conclusion as support for its proposed activity. All cited advisory opinions are available
2 on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

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Sincerely,

Robert D. Lenhard
Chairman