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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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June 1, 2000

**AGENDA ITEM**  
For Meeting of: 6-08-00

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon   
Staff Director

FROM: Lawrence M. Noble   
General Counsel

N. Bradley Litchfield   
Associate General Counsel

Michael G. Marinelli   
Staff Attorney

Subject: Draft AO 2000-08

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for June 8, 2000.

Attachment

1 ADVISORY OPINION 2000-08

2  
3 Philip D. Harvey  
4 DKT International  
5 1120 19<sup>th</sup> Street, N.W.  
6 Washington, DC 20036  
7

**DRAFT**

8 Dear Mr. Harvey:  
9

10 This refers to your letters dated March 31, 2000 (received at the Commission on  
11 April 25) and February 18, requesting advice on the application of the Federal Election  
12 Campaign Act of 1971, as amended ("the Act"), and Commission regulations to your  
13 proposal to make monetary gifts to one or more candidates.

14 **FACTS**

15 You state that you are interested in making a gift to an individual who is also a  
16 candidate for Federal office. This individual is neither a personal friend nor a relative,  
17 and you have never before given this individual a gift. You assert that, under the tax  
18 code, you may make a non-taxable gift of \$10,000 to anyone. You further state that your  
19 purpose for making the gift is your desire, as a citizen of the United States, to show your  
20 gratitude that the individual, to whom you would like to make a personal gift, is seeking  
21 Federal office, and is willing to engage in a difficult and time-consuming campaign. You  
22 explain that you do not always agree with this Federal candidate's positions, and do not  
23 wish to directly support his campaign. You further assert that you will not make the gift  
24 to influence a Federal election.<sup>1</sup> Instead, you wish to make the gift "to express my deep  
25 appreciation to this individual for foregoing opportunities in the private sector in order to  
26 serve his country."

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<sup>1</sup> It also appears that your proposed gift would not be received or deposited or reported by the candidate's campaign committee.

1           You state you are willing to put such restrictions on the gift as may be necessary  
2 to preclude the donee from using any of the proceeds to defray campaign expenses. You  
3 also state your intention that the gift be used solely for the candidate's personal expenses.  
4 You explain that you would be willing to make the gift anonymously, so as to preclude  
5 even the appearance that you are trying to curry favor with a candidate for Federal office.  
6 You further indicate that you have made contact with two candidates for Federal office  
7 who would be willing to accept your anonymous gifts, not to be used for campaign  
8 purposes, if the Commission advises you "that the gifts will not violate the campaign  
9 finance laws." You also state that the candidates contacted are not now officials or  
10 employees of either State or Federal government.

11           You ask whether your proposed gifts would be subject to the political contribution  
12 limits found in the Act and Commission regulations.

### 13 **ACT AND COMMISSION REGULATIONS**

14           The Act and Commission regulations define the term "contribution" to include a  
15 gift or "deposit of money" by any person for the purpose of influencing any election for  
16 Federal office. 2 U.S.C. §431(8)(A)(i), 11 CFR 100.7(a)(1). No person shall make  
17 contributions to any candidate and that candidate's authorized committees with respect to  
18 any election for Federal office which, in the aggregate, exceed \$1,000. 2 U.S.C.  
19 §441a(a)(1)(A), 11 CFR 110.1(b).

20           With limited exceptions, candidates for Federal office may make unlimited  
21 campaign expenditures from personal funds. 11 CFR 110.10(a).<sup>3</sup> For purposes of section

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<sup>3</sup> Presidential candidates who accept Federal funds for their general election campaigns or their primary campaigns are limited in the amount of personal funds they may use for campaign expenditures. 26 U.S.C. §§9004(d) and 9035(a); 11 CFR 9003.2(c) and 9035.2.

1 110.10, the definition of "personal funds" includes salary and other earned income from  
2 bona fide employment; dividends and proceeds from the sale of the candidate's stocks or  
3 other investments; bequests to the candidate; income from trusts established before  
4 candidacy; income from trusts established by bequest after candidacy of which the  
5 candidate is the beneficiary; gifts of a personal nature which had been customarily  
6 received prior to candidacy; proceeds from lotteries and similar legal games of chance.  
7 11 CFR 110.10(b)(2).

8 The Act and Commission regulations also prohibit the conversion of campaign  
9 funds to any personal use. 2 U.S.C. §439a, 11 CFR 113.2(d). Notwithstanding that the  
10 use of funds for a particular expense would be a personal use, payment of that expense by  
11 any person other than the candidate or the campaign committee shall be a contribution to  
12 the candidate, unless the payment would have been made irrespective of the candidacy.  
13 11 CFR 113.1(g)(6). Examples of payments considered to be irrespective of the  
14 candidacy include, but are not limited to, situations where:

- 15 (i) The payment is a donation to a legal expense trust fund established in  
16 accordance with the rules of the United States Senate or the United States House of  
17 Representatives;
- 18 (ii) The payment is made from funds that are the candidate's personal funds as  
19 defined in 11 CFR 110.10(b), including an account jointly held by the candidate and a  
20 member of the candidate's family;
- 21 (iii) Payments for that expense were made by the person making the payment  
22 before the candidate became a candidate.

**1 APPLICATION TO PROPOSAL**

2  
3 The Commission notes your statement that you do not intend that your "gift" to a  
4 Federal candidate would influence a Federal election. However, while you assert that you  
5 are not making the gift to support the candidacy of the recipient, you concede that it  
6 would be donated in recognition and support of that person's desire to run for office.  
7 Your statement makes clear that the proposed gift would not be made but for the  
8 recipient's status as a Federal candidate; it is, therefore, linked to the Federal election.  
9 Accordingly, this gift would be considered a contribution under the Act and Commission  
10 regulations.

11 From the perspective of the recipient candidate, this gift would be treated as a  
12 contribution even with the conditions you offer: a gift given anonymously and with the  
13 condition that the funds be only used for "personal expenses."<sup>3</sup> As the cited Commission  
14 regulations provide, campaign funds cannot be converted to personal use. 11 CFR  
15 113.2(d). Under 11 CFR 113.1(g)(6), payment by a third person of a candidate's personal  
16 expenses during the campaign would be considered a contribution by the third person  
17 (you, in this case) to that candidate, unless the payment would be made irrespective of the  
18 candidacy.<sup>4</sup> Again, your gift is expressly tied to the individual's decision to seek Federal  
19 office. Your motivation for making the gift, to reward the candidate for his decision to  
20 run, would not come within any of the examples described at 11 CFR 113.1(g)(6) which

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<sup>3</sup> For the reasons discussed elsewhere in this opinion, your willingness to make an anonymous gift makes no difference on the question of whether it would be made for the purpose of influencing a Federal election or would instead represent only an augmentation of the candidate's personal funds.

<sup>4</sup> Even prior to the current regulations at 11 CFR 113.1(g), the Commission had consistently viewed gifts or loans made to a candidate to pay his personal expenses, where such funds were expressly given because the candidate was running for office, as contributions to his campaign. See Advisory Opinions 1982-64 and 1978-40, and the Commission's response to Advisory Opinion Request 1976-84.

1 allows some (non-contribution) payments to a Federal candidate.<sup>5</sup> In particular, these  
2 gifts could not be viewed as constituting personal funds of a candidate under 11 CFR  
3 110.10(b), since they would not be "gifts of a personal nature which had been customarily  
4 received prior to candidacy." 11 CFR 110.10(b)(2); *compare* Advisory Opinion 1988-07  
5 [candidate allowed to accept \$20,000 personal gift from parents who had made similar  
6 annual gifts to him in three year period before his candidacy].

7 Therefore, since these proposed gifts would be considered campaign contributions  
8 under the Act and Commission regulations, the contribution limits would apply to them.  
9 2 U.S.C. §441a(a)(1)(A), 11 CFR 110.1(b). As an individual, you are not permitted to  
10 make contributions to a Federal candidate, including the candidate's authorized political  
11 committees, with respect to any election for Federal office which, in the aggregate,  
12 exceed \$1,000 per election. *Id.*<sup>6</sup>

13 This response constitutes an advisory opinion concerning the application of the  
14 Act, or regulations prescribed by the Commission, to the specific transaction or activity  
15 set forth in your request. *See* 2 U.S.C. §437f.

16 Sincerely,

17  
18 Darryl R. Wold  
19 Chairman  
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21 Enclosures (AOs 2000-01, 1988-07, 1982-64, 1978-40, and Re: AOR 1976-84)  
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<sup>5</sup> For a recent application of 11 CFR 113.1(g)(6), *see* Advisory Opinion 2000-01. In that opinion, the Commission concluded that a law firm's payment of half salary to an attorney employed with the firm who was a Federal candidate, where the attorney was not performing work for the firm, would be a contribution to the candidate's campaign.

<sup>6</sup> The Commission notes that, as an individual, you are not permitted to make total contributions to Federal candidates and political committees "aggregating more than \$25,000 in any calendar year." 2 U.S.C. §441a(a)(3) and 11 CFR 110.5.