



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 23, 1978

AO 1978-6

Norman G. Gaar
2340 West 51st Street
Westwood, Kansas 66205

Dear Mr. Gaar:

This responds to your request dated January 24, 1978, for an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to your law firms' payment to you of compensation during a period in which you are campaigning for the United States Senate.

Your letter indicates that you are a bond attorney, presently an active partner in a large law firm, and a member and Majority Leader of the Kansas Senate. You are compensated by the firm, a general partnership, on the basis of an annually set percentage of its net earnings. Your compensation agreement with the firm allows for your fulfillment of your obligations in the State senate, which is in session annually from approximately January to April. Senate duties require your absence from the law office an average maximum of one day weekly during the remainder of the year.

While campaigning for the U.S. Senate, you expect to attend to your law practice activities and duties (e.g., assisting present clients, accepting and conferring with new clients, performing office work during and after business hours, and assigning work to and conferring with junior attorneys) as you have done in the past "during each regular Senate session." You anticipate assigning to other lawyers work which you, except for your campaign, would have undertaken yourself, and thus you expect less of your attorney time to be recorded as client work done by the firm. Finally, you state that your firm proposes no change in the amount of your compensation during the fiscal year or years of your Senate campaign. You inquire whether any part of such compensation constitutes a contribution within the meaning of the Act.

Commission regulations define as personal funds "salary and other earned income from bona fide employment." 11 CFR 110.10(b)(2). A candidate's use of such funds for campaign purposes is unlimited, though it must be reported. 11 CFR 104.1 et seq. The Commission has taken the position that such personal funds do not qualify as a contribution to the candidate by his employer to the extent that the requisite bona fide employment relation exists between the

candidate and his employer, for purposes genuinely independent of his candidacy, and provided that any compensation paid to the candidate is exclusively in consideration of employment services performed by him. See Advisory Opinion 1977-68, copy enclosed.

Accordingly, compensation paid to you by your firm is not a contribution within the meaning of the Act insofar as it is paid according to the same compensation scheme followed by you and the firm prior to the onset of your candidate status. Your letter indicates that your compensation from the firm is based at least partially on the number of hours you record as client work done by the firm. You have also stated, however, that your compensation from the firm will not decrease this year despite a decrease (due to your campaign) in the number of hours "recorded on client work in the office." Thus it is the opinion of the Commission that to the extent your compensation from the firm is not reduced to reflect the lower number of hours you will work for the firm because of your candidacy, the amount of compensation attributable to that difference is a contribution to your campaign by the general partnership. This contribution is subject to the limitations and the reporting and disclosure requirements of the Act. See 2 U.S.C. 434, 441(a); 11.CFR 104, 110, especially 110.1(e): contributions by a partnership. The partnership contribution includes, of course, any increase in the firm's overhead or operating costs which are attributable to your campaign. See 11 CFR 100.4(a)(1)(iii).

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Thomas E. Harris
Chairman for the
Federal Election Commission

Enclosure