



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 11, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-74

Mr. James E. Sharp
Sharp, Randolph & Green
1800 Massachusetts Avenue, N.W.
Suite 501
Washington, D.C. 20036

Dear Mr. Sharp:

This responds to your letter of December 3, 1979 requesting an advisory opinion on behalf of Mr. William Emerson, a candidate for the House of Representatives, regarding application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to compensation received for lobbying and consulting services rendered while he is a candidate.

According to your request, while Mr. Emerson is a candidate he will maintain a legislative lobbying and consulting business. His clients will be corporations, including his former employer, whom you say will engage his services "for purposes genuinely independent of his candidacy." You state that in each instance he will be compensated exclusively in consideration of services performed by him. He will obtain assurances that his rate of compensation is equal to that earned by lobbyists who perform similar services. He does not expect to use clients' facilities and if he does in no case would the facilities be used for campaign purposes. He and his clients will review his contracts on a monthly basis. If he is unable to perform or if he fails to perform the terms of the contract the fee will be reduced or the contract terminated.

You ask the Commission to issue an opinion which confirms that under the described circumstances the compensation received by Mr. Emerson is not a contribution or an expenditure.

The Commission recognized in Advisory Opinion 1977-45 that an individual may pursue gainful employment while a candidate for Federal office. In a series of opinions it set forth the following criteria which, if satisfied, would mean that compensation received by a candidate

would not qualify as a contribution to the candidate from the employer: (i) the compensation results from bona fide employment genuinely independent of one's candidacy; (ii) the compensation is exclusively in consideration of services performed by the candidate; and (iii) the compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time. See Advisory Opinions 1977-45, 1977-68 and 1978-6 (copies enclosed).

Based on the assertions made in the request that this is bona fide employment genuinely independent of Mr. Emerson's candidacy, that compensation is exclusively for his services, and that the rate of compensation is the same as a similarly qualified person would receive, the Commission concludes that compensation paid to Mr. Emerson by clients under the circumstances set out in the request would not constitute a contribution or expenditure under the Act or Commission regulations.

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)

Robert O. Tiernan
Chairman for the
Federal Election Commission

Enclosures (AO 1977-45, 1977-68, 1978-6)