



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 21, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-2

R. Verl Hansen, L.P.A.
Hansen & Cypher Co.
800 Falls Avenue
Post Office Box 1251
Twins Falls, ID 83303-1251

Dear Mr. Hansen:

This responds to your letters of November 25, and December 24, 1985, which request an advisory opinion on behalf of the Gary Robbins for Congress Campaign ("Robbins Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the reporting of the profits from the sales of dry beans and popcorn by a candidate and his wife.

Your request states that Mr. Robbins is a candidate for the U.S. House of Representatives from the Second District in Idaho.¹ He and his wife are conducting a "door-to-door campaign" and are selling dry beans and popcorn "door-to-door" to finance his congressional campaign. In selling the products, Mr. Robbins first identifies himself as a congressional candidate, conducts his campaigning, distributes any printed campaign material he may have, solicits the individual to purchase beans and popcorn, and states that the proceeds will be used to finance his campaign. The proceeds from the sale are used first to pay for the beans and popcorn; the remaining funds are used to cover the cost of the couple's travel expenses. You ask if the "profits" from the "sales" should be reported by the Robbins Committee as receipts and expenditures of Mr. Robbins' personal funds.

¹ Mr. Robbins would become a candidate for purposes of the Act and regulations as a result of the receipt of contributions aggregating in excess of \$5,000 or the making of expenditures in excess of \$5,000 by either Mr. Robbins or by other designated individuals on his behalf. 2 U.S.C. 431(2) and 11 CFR 100.3.

The definition of a contribution includes, "any gift, subscription, ... or anything of value made by any person for the purpose of influencing an election for Federal office." The definition of an expenditure includes "any purchase, payment, distribution,... or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8) and 431(9). Additionally, Commission regulations provide that the entire amount paid, as the purchase price for a fundraising item sold by a political committee is a contribution. 11 CFR 100.7(a)(2).

The Commission in past advisory opinions has allowed candidates for Federal office to participate in certain activities which would not result in the making of contributions or expenditures. In those instances, the activity did not include any solicitation or acceptance of campaign contributions; nor did it include any communication which expressly advocated the nomination, election, or defeat of any Federal candidate. See Advisory Opinion 1985-32 and opinions cited therein. The Commission has also permitted candidates to sell noncampaign materials while they are candidates provided such materials and the sales activity are entirely separate from the campaign. See Advisory Opinion 1978-72.

In this situation, however, Mr. Robbins' selling of the beans and popcorn is part of his congressional campaign activity and is used to solicit campaign contributions as well as to advocate his candidacy. Therefore, all proceeds received and costs incurred by the candidate and his wife in selling the products are received and made for the purpose of influencing a Federal election and constitute reportable contributions and expenditures. 2 U.S.C. 431(8) and 431(9). A candidate who receives a contribution or makes disbursements in connection with his election is considered as having done so as an agent of his authorized committee. 2 U.S.C. 432(e)(2) and 11 CFR 101.2(a). Thus, the reporting of the contributions and expenditures related to sales of the beans and popcorn is the responsibility of the Robbins Committee.

Reportable expenditures include such costs as the purchase of the beans and popcorn from the supplier² and the travel expenses of the candidate and his wife. The individual purchasers of the beans and popcorn are contributors to the Robbins campaign, and depending on the amount of the purchase, itemized recordkeeping and reporting requirements may apply. See 2 U.S.C. 432(b), 432(c), and 434(b); 11 CFR Parts 102 and 104. Any expenses paid by Mr. Robbins from his personal funds for this campaign activity should be reported as in-kind contributions from him to his committee and also as corresponding expenditures of the Robbins Committee.³ 11 CFR 104.13(a)(2). Additionally, all proceeds received from the sale of the

² If the cost of the beans and popcorn charged by the vendor to the Robbins' campaign is below the "usual and normal charge", an in-kind contribution would result by the vendor to the Robbins Committee and such a contribution would be subject to the prohibitions and limitations of the Act. 11 CFR 100.7(a) (1)(iii). However, 11 CFR 100.7(b)(7) allows a vendor to provide food and beverages to a candidate's campaign at a charge less than the normal comparable commercial rate provided that the charge is at least equal to the cost of the food or beverage to the vendor and the aggregate discount given to the candidate does not exceed \$1000 with respect to a single election.

³ As an alternative to an in-kind contribution, Mr. Robbins may loan his personal funds to the Robbins Committee for the purchase of the beans and popcorn. As contributions are received from the sale of those items, the Robbins Committee may repay such loans. See generally 11 CFR 104.3(a)(3)(vii), 104.3(a)(4)(iv), 104.3(b)(4)(iii), 104.3(d), and 110.10.

beans and popcorn are treated as contributions and are subject to the prohibitions and limitations of the Act. 11 CFR 100.7(a)(2) and 2 U.S.C. 441a, 441b, 441c, 441e, 441g.

This response constitutes an advisory opinion concerning application of the Act and Commission regulations to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures (AOs 1985-32 and 1978-72)