



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 25, 1990

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1990-9

Margaret R. Mueller
8848 Music Street
Novelty, OH 44072

Dear Ms. Mueller:

This responds to your letter dated May 10, 1990, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to your publication of a newsletter discussing public policy issues during your campaign for Federal office.

You are a Republican candidate for the U.S. House of Representatives from the 11th District of Ohio. Since March of 1989, a corporation owned by you, the Music Street Publishing Company, has been publishing a monthly newsletter called "SPEAKOUT!" that contains opinion pieces (including many written by you) on different issues of public concern, as well as articles on miscellaneous topics. In March, 1990, you requested an advisory opinion asking whether you may continue publication of the newsletter during your Congressional campaign. The request raised the question of whether the Commission would consider operating expenses of publishing your newsletter to be expenditures for the purpose of influencing a Federal election under the Act and, therefore, whether payments for such expenses by any person would constitute contributions to a Federal candidate under the Act.

On April 27, 1990, the Commission issued an opinion stating that, although the purposes of informing the public about current issues and encouraging discussion of such issues are not inherently election-related, continued publication of the newsletter since you have become a candidate could potentially be used to advance your candidacy. Advisory Opinion 1990-5. The Commission concluded, therefore, that expenses incurred in the publication and distribution of your proposed newsletter would be considered expenditures for the purpose of influencing your election to Congress if: (1) direct or indirect reference is made to the candidacy, campaign or qualifications for public office of you or your opponent; (2) articles or editorials are published

referring to your views on public policy issues, or those of your opponent, or referring to issues raised in the campaign, whether written by you or anyone else; or (3) distribution of the newsletter is expanded significantly beyond its present audience, or in any manner that otherwise indicates its utilization of the newsletter as a campaign communication. The Commission stated that an example of a campaign-related item would be an article or editorial about the issue of Congressional term limitation or related to the Coalition to End the Permanent Congress, due to your focus upon that issue in your campaign and your candidacy's association with that organization.

The Commission concluded that each edition of the newsletter would be viewed separately and in its entirety. Any campaign-related content in a newsletter would render expenses of publishing the entire edition a campaign expenditure. Based upon this conclusion, the Commission determined that campaign-related editions of the newsletter could be published as an activity of the campaign. Your campaign committee would then assume the costs for that edition, either directly making the payments to the providers of goods or services for the newsletter or paying your company for the expenses in publishing that issue. Payments to be made to the company must be made within a commercially reasonable time to avoid corporate contributions by the company. Payments for the production and circulation of the newsletter would be operating expenditures of the committee and reported as such, and payments for advertising space would be contributions to the campaign which, if corporate in origin, would be prohibited. 2 U.S.C. 441b(a); 11 CFR 114.2.

You state that, in order to avoid corporate contributions by the publishing company, you wish to continue publication of the newsletter as a sole proprietor. You also enclose a copy of the May, 1990, edition of SPEAKOUT! You ask whether the costs of printing and circulating this issue "under the sole proprietorship" should be reported as an expenditure or contribution. The Commission notes that the masthead no longer lists the Music Street Publishing Company as the publisher, but instead lists you.

The edition enclosed by you includes an article on the first and second pages expressing your views on public issues and two articles related to the Coalition to End the Permanent Congress and Congressional term limitation. Under the criteria set out in Advisory Opinion 1990-5, such articles are campaign-related and the expenses incurred in the publication and distribution of the entire edition would be expenditures for the purpose of influencing a Federal election.^{1/}

According to 11 CFR 110.10(a), candidates for Federal office, except for presidential candidates receiving public funding, may make unlimited expenditures from personal funds. The term "personal funds" is defined, inter alia, as:

- (1) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:
 - (i) Legal and rightful title, or
 - (ii) An equitable interest.

11 CFR 110.10(b)(1). As a sole proprietor, and not as a corporate entity, you may expend your personal funds without limit for campaign-related editions of the newsletter. Funds received from others, however, to pay the expenses of the newsletter, e.g., payments for advertising space, will be contributions subject to the limits and prohibitions of the Act. See, e.g., 2 U.S.C. 441a, 441b, 441c, and 441e.

The personal funds expended by you should be reported by your principal campaign committee as in-kind contributions from you. 11 CFR 100.7(a)(1)(iii). Such contributions should be reported as both contributions and expenditures of the committee, and, assuming they aggregate in excess of \$200 in a calendar year, should be reported on Schedules A and B. 11 CFR 104.13(a)(1), 104.13(a)(2), 104.3(a)(4)(i), and 104.3(b)(4)(i).

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

Sincerely,

(signed)

Lee Ann Elliott
Chairman for the Federal Election Commission

Enclosure (AO 1990-5)

1/ You state that your "reading" of Advisory Opinion 1990-5 is that "the Commission does not regard the costs of any previous editions of SPEAKOUT! which it reviewed" to involve expenditures or contributions. The Commission did not make such a determination. In an advisory opinion, the Commission only addresses proposed future activity.