



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1991

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-9

Robert F. Bauer
Judith L. Corley
607 Fourteenth Street, N.W.
Suite 800
Washington, D.C. 20005-2011

Dear Mr. Bauer and Ms. Corley:

This responds to your letter dated March 25, 1991, requesting an advisory opinion on behalf of Congressman Peter Hoagland and the Hoagland for Congress Committee ("the Hoagland Committee" or "the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the payment of interest by the Hoagland Committee on loans received from Congressman Hoagland.

Congressman Hoagland was first elected to the House of Representatives in 1988 and the Hoagland for Congress Committee was his principal campaign committee for that election. From August 1987 to July 1989, Mr. Hoagland made a series of loans from his personal funds to the Committee. In addition, Mr. Hoagland obtained \$50,000 in bank loans from Norwest Bank in Omaha and loaned the proceeds to the Committee. You state that the loans have been continuously reported by the Hoagland Committee as loans of the candidate's personal funds. Funds obtained from bank loans have been disclosed as loans from the original source, Norwest Bank.

Although the outstanding balance varied at different times during this period, the total amount loaned was \$290,000. You state that, as of December 31, 1990, \$155,430.93 had been repaid on these loans, and some of the loans had been repaid in full. There is still a current balance of \$134,569.07. None of the loans were memorialized by any written instrument until July 1990. You assert that there was, however, the understanding that the loans, along with the interest, would be repaid to Mr. Hoagland in full if funds were available.¹

On July 23, 1990, when approximately \$170,000 of the loans remained outstanding, the Committee executed a promissory note for the repayment of loans to Mr. Hoagland.² Under the agreement, the Committee is obligated to repay the remaining outstanding balance on all of the loans with interest. In addition, subject to the approval of the Commission, the Committee is required to pay interest on the loans retroactive to the date each loan was made. For the loans obtained from Norwest Bank, the interest to be paid to Mr. Hoagland is the amount charged by the bank, i.e., 11.5 percent. For all other loans, the interest is the "applicable federal rate published by the Internal Revenue Service around the time of the execution of the note." That figure is 8.47 percent per annum. The note also provides that for each repayment made, the Committee must identify the loan being repaid, the amount to be considered payment of principal, and the amount to be considered payment of interest.

Attached to the note are three schedules, one for loans that were outstanding and unpaid (Schedule 1), one for loans that have been completely repaid (Schedule 2), and one for the bank loans (Schedule 3). Schedule 1 consists of 12 loans totaling \$159,500. Schedule 2 consists of 16 repaid loans totaling \$80,500. Schedule 3 discloses that \$50,000 in bank loans were obtained by the candidate, and loaned to the Committee in four increments, with repayment to the candidate on all but \$10,500.

The note specifically provides that, for loans on Schedule 1, the Committee promises to repay the entire principal that remained outstanding as of the date of the note; the interest on the unpaid principal calculated as of the date of the note until the principal is repaid in full; and the interest on the unpaid principal as of the date each loan was made until the date of the note. For loans on Schedule 2, the note provides for repayment of the interest calculated from the date each loan was made until each loan was repaid. For loans on Schedule 3, the Committee promises to repay the entire principal outstanding as of the date of the note; interest on the unpaid principal at the rate of interest charged by the bank calculated as of the date of the note until the principal is repaid in full; and the interest on the principal of each loan, whether paid or unpaid as of the date of the note, at the rate of interest charged by the bank to be calculated as of the date of the candidate's loan to the campaign until the earlier of the date the candidate is repaid or the date of the note.

You ask whether the Committee may make interest payments on a loan from the candidate retroactive to the date of the original loan and whether interest payments may be made on loans that have been repaid. You also request that the Commission clarify the reporting requirements related to such interest payments.

Commission regulations permit a candidate (other than one who receives public funding) to make unlimited expenditures from his personal funds for campaign purposes. 11 CFR 110.10(a). The candidate may thus make loans from his personal funds to his authorized committees without limitation. See 11 CFR 100.7(a)(1). With respect to the repayment of such loans to the candidate, the Act and Commission regulations prohibit individuals who were not in Congress on January 8, 1980, from converting excess campaign funds to personal use, but those regulations specifically except the repayment to the candidate of "any loan the proceeds of which were used in connection with his or her campaign." 11 CFR 113.2(d); see also 2 U.S.C. 439a. In addition, the regulations include within the definition of expenditure the payment of any interest on an

obligation. 11 CFR 100.8(a)(1)(i). The regulations thus contemplate that the repayment of a loan would include an accompanying payment of interest which would be treated as an expenditure or operating expense. As stated in Advisory Opinion 1986-45, since the Commission regulations specifically make lawful the repayment of loans the candidate has made to the committee, it would follow that the payment of interest on such loans, to the extent the interest charged does not exceed a commercially reasonable rate, would also be lawful and not a personal use.

Unlike the candidate in the situation presented in Advisory Opinion 1986-45, however, you seek to have interest paid to the candidate on loans or portions of loans that were already repaid prior to the time the candidate and his committee entered into a written agreement establishing interest rates for repayment by the committee. In addition, prior to the July 1990 instrument signed by the Hoagland Committee, the Committee reports disclosed that there was no interest rate applicable to the loans not originating with the bank. The two reports filed since then, i.e., the October 1990 report and the 1990 year end report, have reported an 8.47 percent interest rate for the non-bank loans.³

In discussing the payment of interest by the Committee, the Commission assigns the loans to categories similar to those on the schedules attached to the note. With respect to loans already repaid in full at the time of the note's execution, the Commission concludes that Mr. Hoagland may not receive any interest. The Commission has held that permitting a committee to change a gift by a candidate of his personal funds to a loan a number of years after it was made, thus enabling the disclosure of such "loan" as a current debt of the committee, was impermissible. Such a change would "contravene the obvious intent of 2 U.S.C. 434(b)(12) [now restated at 434(b)(8)] that debts and obligations be initially disclosed in a timely manner and be continuously reported thereafter until extinguished." Advisory Opinion 1977-58. Similarly, the failure to disclose any interest rate for the loans and the indication that interest was not even applicable would foreclose the retroactive application of interest for such loans. Such retroactive interest payments would represent a conversion of excess funds to personal use in violation of 2 U.S.C. 439a and 11 CFR 113.2(d).

For similar reasons, the Committee may not pay the interest that would accrue on the unpaid principal as a result of a calculation of interest from the date the loan was made to the date of the note. With respect to that portion of the principal still outstanding, the Committee may pay the interest that would accrue on the unpaid principal between the date of the note until the principal is repaid in full. Advisory Opinion 1986-45. The making of the note and the reporting of the interest rates in subsequent reporting periods is similar to a renegotiation of the loans. The payment of interest accruing after such a renegotiation is not an imposition of a retroactive obligation.

With respect to the loans originating from the bank, it appears that the Committee has reported complete repayment to the bank as of the end of the reporting period covered by the 1989 year end report, i.e., July 1, 1989, to December 31, 1989. No payments to the bank were disclosed during this period and Schedule 3 attached to the note indicates that \$10,500 was still owed to Mr. Hoagland for the bank loans as of July 1990. (It appears from Schedule 3 that payments to Mr. Hoagland listed on the 1989 year end report were in repayment of other loans made by him.) The Commission assumes that repayment to the bank was made directly by Mr. Hoagland. It

appears that the Committee is now reporting the amounts owed to Mr. Hoagland as a result of the bank loans as part of the other group of loans found in Schedule 1. Hence, the interest for these outstanding amounts is being reported as 8.47 percent rather than 11.5 percent.

Based on principles set out above, the Committee would have been able to pay Mr. Hoagland the interest accrued before the agreement if there had been proper reporting of the payment of the loan interest. See 11 CFR 104.3(b)(4)(iv). It appears, however, that Mr. Hoagland's payments of interest to the bank were not reported by the Committee as new loans from Mr. Hoagland or as debts owed to him by the Committee, thus negating his ability to recover such interest payments. On the principal still owed by the Committee to Mr. Hoagland at the time of the note (\$10,500) which has been included in the recent reports as part of the group of loans not originating with the bank, Mr. Hoagland may recover the interest that accrued from the time of the note until its repayment in November 1990, at the 11.5 percent rate.

The payments of interest by the Committee to Mr. Hoagland are to be reported on Schedule B as an operating expenditure of the Committee. See 11 CFR 100.8(a)(1)(i). Each interest payment should be itemized separately. See 11 CFR 104.3(b)(4)(i) and (iii). See Advisory Opinion 1986-45, note 4.

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)

John Warren McGarry
Chairman for the Federal Election Commission

Enclosures (AOs 1986-45 and 1977-58)

1/ In reports filed for the periods prior to the 1990 October quarterly report, the Committee wrote in "NA" in the spaces on Schedule C for disclosing the interest rates of the non-bank loans.

2/ You state that the note was executed after the time pressures of the original campaign had abated and after the first eighteen months in office.

3/ The Hoagland Committee's year end report discloses no interest rate for four loans totaling \$19,500 although the October report disclosed an interest rate for those loans and both reports disclose interest rates for all other outstanding loans. The Commission assumes that these omissions from the year end report were inadvertent.