




FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

October 3, 1991

MEMORANDUM

TO: The Commission
THROUGH: John C. Surina
Staff Director
FROM: Lawrence M. Noble
N. Bradley Litchfield 
SUBJECT: Draft AO 1991-31

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for October 10, 1991.

Attachment

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2
3 **ADVISORY OPINION 1991-31**

4 **L.S. Robinson**
5 **Finance Coordinator**
6 **Porter Goss Re-Election Team**
7 **P.O. Box 517**
8 **Ft. Myers, FL 33902**

DRAFT

9 **Dear Ms. Robinson:**

10 **This responds to your letters dated September 12 and**
11 **July 17, 1991, requesting an advisory opinion on behalf of**
12 **the Porter Goss Re-Election Team ("the Committee") concerning**
13 **application of the Federal Election Campaign Act of 1971, as**
14 **amended ("the Act"), and Commission regulations to the**
15 **reporting of charitable donations made in response to a**
16 **Committee solicitation for contributions.**

17 **The Porter Goss Re-Election Team is the principal**
18 **campaign committee for the re-election of Representative**
19 **Porter Goss to the U.S. House of Representatives in 1992. In**
20 **June 1991, the Committee sent out a letter under Mr. Goss'**
21 **signature soliciting contributions to his 1992 re-election**
22 **effort. Michael Tracy responded to the solicitation with a**
23 **letter to Mr. Goss indicating that, in lieu of contributions**
24 **to the campaign, he was sending donations to charities. With**
25 **the letter, Mr. Tracy enclosed photocopies of four \$50 checks**
26 **made payable to children's charities in Sarasota County.**
27 **These checks each included the notation: "Donation in name of**
28 **Porter Goss - member of Congress." Mr. Tracy sent the checks**
29 **themselves directly to the charities.**

30 **The four designated charities have written thank you**
letters to Mr. Goss, but, other than these unsolicited

3 letters, the Committee has had no direct contact with the
4 charities. You state that the Committee knows of no public
5 announcement with regard to Mr. Tracy's donations and has no
6 intention of making the fact of these donations public or
7 referring to them in any future solicitation or mailing. You
8 also state that the Committee has no reason to think that the
9 charities will make the donations public.

10 You ask whether the Committee has any reporting
11 requirements with respect to the four donations.

12 The Act broadly defines the term "contribution" to
13 include "any gift, subscription, loan, advance, or deposit of
14 money or anything of value made by any person for the purpose
15 of influencing any election for Federal office." 2 U.S.C.
16 §431(8)(A)(i); 11 CFR 100.7(a)(1). Authorized political
17 committees are required to report the total of all receipts
18 for the reporting period and the calendar year, including the
19 total of all contributions received from persons other than
20 political committees. 2 U.S.C. §434(b)(2) and (b)(2)(A); 11
21 CFR 104.3(a)(3) and (a)(3)(1). An authorized committee must
22 report the identification of each individual whose
23 contribution or contributions to the committee aggregate in
24 excess of \$200 per calendar year. 2 U.S.C. §434(b)(3)(A); 11
25 CFR 104.3(a)(4)(i). Your reporting obligations depend upon
26 whether the Committee has received something of value from
27 Mr. Tracy.

28 The Commission notes that there was no actual receipt
29 of the checks by the Committee or the candidate. The
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3 Committee did not receive the checks for its own use, nor
4 pass them along to the charities in any attempt to join in
5 the donor's conduct.

6 In addition, there does not appear to be any
7 constructive receipt by the Committee or the candidate in the
8 form of some control over the funds. The Commission has
9 cautioned that the participation of a candidate or the use of
10 a candidate's name in connection with charities or other
11 organizations may or may not result in a contribution to the
12 candidate's Federal campaign, depending on the facts and
13 circumstances of a situation (including whether contributions
14 to the candidate's campaign were solicited). See Advisory
15 Opinions 1986-37, 1985-38, and 1978-15. Even though the
16 checks written by Mr. Tracy contained a reference to
17 Congressman Goss and were made in response to a campaign
18 solicitation, the Committee had no role in Mr. Tracy's
19 decision to donate to the charities or in the selection of
20 the recipient charities, was merely informed by Mr. Tracy of
21 the donations after they were made, and was thanked
22 gratuitously by the donees. In addition, no action was taken
23 by the Committee or the candidate to make the contributions
24 public. The Committee is not considered a recipient of
25 contributions as a result of a use of the candidate's name
26 that was neither consented to, nor ratified by, the
27 Committee.

28 The Commission concludes therefore that the Committee
29 has no reporting obligations with respect to Mr. Tracy's four
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3 **charitable donations.**

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

8
9 **Sincerely,**

10
11 **John Warren McGarry**
12 **Chairman for the**
13 **Federal Election Commission**

14 **Enclosures (AOs 1986-37, 1985-38, and 1978-15)**
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