



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 14, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-24

Reed F. Bilbray
Assistant Treasurer
Pilzer for Congress
750 N. St. Paul
Dallas, TX 75201

Dear Mr. Bilbray:

This responds to your letter dated June 9, 1992, requesting an advisory opinion on behalf of Pilzer for Congress ("the Pilzer Committee" or "the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use and sale of various products to retire Committee debt.

The Pilzer Committee was the principal campaign committee of Paul Zane Pilzer for the special House election in the Third District of Texas held on May 4, 1991. It registered with the Commission on April 4, 1991. Mr. Pilzer was defeated in that election. The Committee owes \$395,000 to Mr. Pilzer for loans he made during the campaign, and the Committee desires to pay this debt and terminate.

ZCI, Inc. ("ZCI") is a Texas corporation formed on September 14, 1989, for "the primary purpose of supporting, promoting, managing, and selling Mr. Pilzer's research, writings, and speeches." Mr. Pilzer is the 100% owner of ZCI, chairman, and president of ZCI. ZCI's products include a book written by Mr. Pilzer, and published by Crown Publishers, entitled Unlimited Wealth: The Theory and Practice of Economic Alchemy, and audiotapes and videotapes based upon that book. ZCI is also developing new products based upon the book, such as a "home study" program, and various other tapes. You state that the ZCI products "were not produced by, for, or as a result of the campaign, do not contain any campaign items or propaganda, and were produced either before or after the campaign with no intention of them being used for campaign purposes."^{1/}

You state that the Committee wishes to engage in three types of business activities in order to generate sufficient income to cover operating expenses and retire the debt. The Commission will describe and analyze each transaction separately.

Transaction #1 - Sale of Committee Assets to ZCI

The Pilzer Committee ordered 10,000 copies of the book, Unlimited Wealth, from Crown Publishers' corporate parent, Random House, on March 27, 1991. These books were acquired for the purpose of distributing them without charge to anyone interested in reading about Mr. Pilzer's thoughts and ideas. The total cost, including shipping costs, was \$20,768, or \$2.08 per book, which the Committee paid to Random House on May 20, 1991. You state that the cost was the standard, fair market value price. According to a letter to you from the publisher, it is normal industry practice for a publisher to sell bulk quantities of a book to the author at a favorable price, provided that the author agrees to certain restrictions, including that the book not be resold through normal book distribution channels, and that the author will receive no royalties on those copies purchased by him. The letter stated that the sale "to Paul Pilzer of ZCI Inc." was in the ordinary course of business for sales to non-candidate authors.

A majority of the copies were distributed during the campaign, and the remainder are stored in a rented warehouse. You state that ZCI "has opportunities" to sell the remaining books to third parties who request one. The market price for one book is the regular \$19.95 price. You state that, when "bundled" with other products, such as a tape, or when purchased in larger quantities, discounts of five to 75 percent are typically given. You state that the Pilzer Committee wants to sell its remaining copies of Unlimited Wealth to ZCI at a price equal to or below the price ZCI resells them at fair market rates to third parties. The sale price to ZCI will be no lower than \$2.08 per book and no higher than \$19.95 per book.² You state that all revenue will be used first to pay any Committee operating expenses and then to pay off its debts.

Under the Act, corporations may not make contributions or expenditures in connection with a Federal election. 2 U.S.C. 441b(a); 11 CFR 114.2(b). The term "contribution or expenditure" is defined to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value ... to any candidate, campaign committee, or political party or organization in connection with any [Federal] election." 2 U.S.C. 441b(b)(2); 11 CFR 114.1(a)(1) and 100.7(a)(1). "Anything of value" includes the provision of goods and services provided at less than the usual and normal charge, i.e., less than the price of the goods in the market from which they ordinarily would have been purchased at the time of the contribution, or less than the commercially reasonable hourly or piecework charge for the services prevailing at the time the services were rendered. 11 CFR 100.7(a)(1)(iii)(B).

The Commission has generally viewed the selling or commercial use of committee assets by a political committee to be fundraising resulting in contributions subject to the Act. Advisory Opinions 1991-34, 1990-3, 1989-4, and 1988-12. This is consistent with Commission regulations which provide that the entire amount paid to attend a fundraiser, or 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 has specifically concluded that contributions do not result, however, in cases of

isolated sales of political committee assets when the assets had been purchased or developed for the committee's own use, rather than for fundraising, and had ascertainable market value. Advisory Opinions 1989-4 and 1986-14. In addition, principal campaign committees with valuable campaign equipment and leftover campaign supplies that wished to terminate their operations have been permitted to liquidate such assets for debt retirement purposes, or in contemplation of prompt dissolution of the committee, without contributions resulting. Advisory Opinions 1990-26, 1985-1, and 1979-24.

Because the remaining books are assets which had been acquired by the Committee for distribution during the campaign and presumably not for resale, and because the Committee is attempting to terminate, ZCI's purchase of these books from the Pilzer Committee would not automatically result in a contribution by ZCI prohibited under 2 U.S.C. 441b(a). A contribution would result, however, if the price paid to the Committee exceeded the usual and normal charge. Advisory Opinions 1990-26, 1989-4, 1986-14, and 1985-1.

In this case, the usual and normal charge to ZCI may be determined from the circumstances of the acquisition of these books. These books were acquired on the basis of a restricted publisher to author transaction between Crown Publishers and "Paul Pilzer of ZCI Inc." Essentially, this was a transaction to which ZCI itself could have been a party, i.e., the publisher could have sold the books directly to ZCI as agent for Paul Pilzer. Any purchase by ZCI from the Pilzer Committee would not be the purchase of a third party retail purchaser or even a wholesale purchaser. Instead, it would be, in effect, the repurchase by the author, or a closely related entity, of books made available at a low price because of the special position of the author. Any price in excess of the price paid to the publisher for the original acquisition of such books would be in excess of the usual and normal charge under such circumstances, and a contribution from ZCI would result. The Commission concludes, therefore, that ZCI may purchase the remaining copies from the Committee but at a price no greater than \$2.08 per copy.

Transaction #2 - Pilzer Committee Retaining Mr. Pilzer to Speak to Third Parties

You state that Mr. Pilzer regularly speaks to third parties for fees of at least \$5,000 plus expenses. These arrangements are typically negotiated through a third party speakers bureau. Mr. Pilzer also often speaks for a reduced fee or at no cost to "third-party organizations" and charities that he personally supports, some of which typically charge fees for attending his speeches. The topic is usually closely related to his book, Unlimited Wealth.

Mr. Pilzer "has offered his speaking services" to the Pilzer Committee at reduced or no cost other than reimbursement for any out-of-pocket expenses. The Committee will "offer Mr. Pilzer's speaking services to third parties at whatever fee it can negotiate." You state that all revenue will first be used to pay committee operating expenses and then will be used to pay the debt.

The Commission assumes that under the proposed arrangement, funds will be raised for the Committee either through payment of a fee by the third party group, e.g., a club or association listening to the speech, or the payment of an admission charge, or both. Since the purpose of Mr. Pilzer's speeches will be to raise funds for the Pilzer Committee, these speeches will be

campaign-related events and result in contributions to the Committee. See Advisory Opinion 1980-42.

Under these circumstances, if a group hiring Mr. Pilzer to speak pays the Committee or Mr. Pilzer any fee for his appearance, such payments are contributions subject to the limitations and prohibitions of the Act. See 2 U.S.C. 432(e)(2). In addition, any payments by a sponsor (or any other person) for any expenses it incurs for the event which are not reimbursed by the Committee will be contributions. 11 CFR 100.7(a)(1), (a)(1)(iii)(A), and (a)(3). Therefore, no payment to the Committee or Mr. Pilzer may be made by a corporation, national bank, labor organization, Federal contractor, or foreign national. 2 U.S.C. 441b, 441c, and 441e. Any payment from a permissible source may not exceed the limits of 2 U.S.C. 441a, when combined with any previous contributions to the Pilzer Committee. 2 U.S.C. 441a(a)(1)(A) and (2)(A). Furthermore, no individual paying such a speaker's fee may be reimbursed or compensated for such costs from prohibited sources, or any other sources. 2 U.S.C. 441f.

Regardless of whether the Pilzer Committee receives funds directly out of amounts raised from the charges or donations paid by audience members, or indirectly in the form of a speaker's fee, the entire amount paid by an audience member is a contribution to the Committee. 11 CFR 100.7(a)(2). Such payments are subject to the same prohibitions and limitations as listed above. The Committee should, to the extent possible, keep records of who purchases event tickets in order to account for contributions from any person which, including the admission charge or donation, aggregate in excess of \$200 during a calendar year. 2 U.S.C. 432(c)(3) and 434(b)(3)(A); 11 CFR 102.9(a)(2) and 104.3(a)(4)(i). See also 11 CFR 102.9(a)(3) and Advisory Opinions 1981-48 and 1980-99.

In publicizing or advertising a speech by Mr. Pilzer, the Committee or the third party sponsor should notify ticket purchasers that they will be contributors under the Act to avoid unlawful contributions. In addition, such ads should contain a proper disclaimer, stating the name of the committee authorizing this solicitation of funds and the entity paying for the solicitation. 2 U.S.C. 441d(a); 11 CFR 110.11(a)(1); Advisory Opinions 1989-21 and 1980-42.^{3/}

Transaction #3 - Purchase of ZCI Products for Resale to Third Parties

As stated above, ZCI regularly produces and sells products related to Unlimited Wealth. ZCI also purchases products at wholesale prices from third parties such as Crown Publishers and resells them at market prices. You state that, at Mr. Pilzer's speeches, by direct solicitation, and through indirect means (such as referrals or from someone seeing Mr. Pilzer interviewed on television), ZCI frequently sells the books and audio and videotapes. For example, at speeches, sales are often made either to the event sponsor (for sale or distribution to attendees) or to individual event attendees. You list the market prices as \$14.95 for a "Soundview" tape or audiotape, \$19.95 for a book, and \$59.95 for a videotape. You state that, when "bundled" with other products, such as a tape, or when purchased in larger quantities, discounts of five to 75 percent are typically given.

The Committee desires to purchase from ZCI, at or above ZCI's cost, books or tapes and other future products. The Committee also desires to purchase various products at wholesale prices from third parties such as Crown Publishers. The Committee would sell these products,

particularly at events where it has booked Mr. Pilzer to speak. Sale prices would be at normal retail prices and "never different than the third-party established price for identical products." All revenue would be used first to pay Committee operating expenses and then the debt.

It appears that ZCI is in the business of selling its products on a retail basis, or for resale to third party vendors, including sponsors of events. When the Committee purchases products from ZCI, it should pay ZCI's usual and normal charge for the products in similar circumstances that contemplate resale to the public. The Commission notes the wide discount range on sales to the public of "bundled" products or sales in large quantities. If such discounts have been applicable to ZCI's sales in other resale situations, the Commission cautions that ZCI should earn a profit in its sale to the Committee that comports with other such sales of similar products and quantity of products in its ordinary course of business. See 11 CFR 100.7(a)(1)(iii)(B). See Advisory Opinion 1990-19.^{4/} The Commission concludes that, under these conditions, these items may be sold by ZCI to the Committee and sold by the Committee to the public.

In the absence of further information as to the ordinary course of business of entities, other than ZCI, which may sell items at wholesale prices to the Committee, the Commission does not reach a conclusion as to arrangements between the Committee and such entities.

To the extent, the Commission approves Transaction #3, it does so on the basis of the sequence presented by you. You have indicated that the Committee would purchase the items first and then resell them, as opposed to receiving orders from the public and then purchasing the ordered amounts from ZCI. In considering arrangements in which vendors have provided political committees with goods or services to assist in raising funds, one of the Commission's concerns has been that, regardless of the degree of success of the effort to raise funds, the committee would retain contribution proceeds while giving up little, or the committee would assume little or no risk with the vendor bearing all, or nearly all, the risk. See Advisory Opinions 1991-18, 1990-19, 1989-21, and 1976-50. By first purchasing the items in quantity and then reselling them at events and through other opportunities, the Committee will meet this concern.

As with the purchase of tickets discussed above, payments to the Committee for the products are contributions and subject to the same prohibitions and limitations described above. The same requirements for advertisements soliciting purchases would also apply, as would the same recordkeeping and reporting requirements. In view of the prices listed for these items, the Committee should also be aware of the requirement that for each contribution in excess of \$50, it should keep a record of the contributor's name and address as well as the date of receipt and amount. 11 CFR 102.9(a)(1).

In stating its conclusions as to the three proposed transactions, the Commission has been mindful of the potential for self-dealing by Mr. Pilzer because of his relationship with ZCI and the products used to raise funds. The Commission is attempting to ensure the safeguards that would attend arms-length transactions. At the same time, it does not wish to place the Committee at such a disadvantage with respect to Mr. Pilzer and his company that might, in effect, result in the conversion of Committee funds to Mr. Pilzer's personal use. 2 U.S.C. 439a; 11 CFR 113.2(d). Advisory Opinion 1988-13 (where the Commission concluded that rent for office space charged

by a candidate to his political committee which is above the usual and normal charge would be subject to the personal use ban).

The Commission expresses no opinion as to any tax ramifications of the transactions, since those issues are outside its jurisdiction.

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)

Joan D. Aikens
Chairman for the Federal Election Commission

Enclosures (AOs 1991-34, 1991-18, 1990-26, 1990-19, 1990-3, 1989-21, 1989-4, 1988-13, 1988-12, 1986-14, 1985-1, 1981-48, 1980-99, 1980-42, 1979-24, and 1976-50)

ENDNOTES

1/ Mr. Pilzer's Theory of Economic Alchemy pertains to technological changes as they affect our economy and society, and the material in the products includes discussion of his opinions on such public issues as unemployment, immigration, deficits, and education.

2/ You state that this price range will enable the Committee to avoid the appearance that it "is receiving revenue at other than non-third party fair market rates" for the books.

3/ If ticket purchases are to be made to the third party sponsor's account with proceeds eventually going to the Committee, the sponsor has certain obligations as to the maintenance and forwarding of records and the creation of a separate account by the sponsor for the receipt of the ticket purchase (i.e., contribution) funds, the payment of a speaker's fee, other expenses incurred by the sponsor, or the distribution of proceeds to the Committee. See generally Advisory Opinions 1989-21 and 1980-42.

4/ Unlike in Advisory Opinion 1990-19, the Commission takes the extra precaution of discussing the size of the profit because of the wide discount range presented.