



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

December 9, 1993

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1993-20

The Honorable Ben Nighthorse Campbell  
United States Senate  
Washington, D.C. 20510-0605

Dear Senator Campbell:

This refers to your letters of November 15, and October 21, 1993, concerning application of the Federal Election Campaign Act of 1971 ("the Act"), as amended, to certain proposed uses of campaign funds by your principal campaign committee, the Campbell Victory Fund (the "Committee").

You state that your biography has been written and will be distributed for sale at book stores around the country. You have been informed that the book publisher will sell copies of the book at a discount to the Committee.<sup>1/</sup> The Committee would like to purchase 100 copies of the book which would produce a 50% discount.<sup>2/</sup> You state that you receive no royalties or profits from the sale of your biography.

You state that the purpose of the purchase would be to distribute signed and unsigned copies to loyal or long-time supporters or financial contributors to your campaign as a "thank you." You affirm that you will not sell the copies or ask that they be purchased.

Your request further explains that free copies would also be given to members of your Congressional staff who were either volunteers or paid workers in your 1992 Senate campaign. You state that you would want these gift books to be considered as a "thank you" to them for their past help. Initially, you also asked whether the Committee could donate copies of the book to office staff who have not assisted in your past campaigns, but your office has informally advised that you no longer propose that the Committee make book gifts to these personnel.

You ask whether Committee purchases of these books at the discounted price, and for use in the manner described, would be legal under the Act.

#### Use of a discounted purchase price

The Act prohibits any contribution or expenditure by a corporation in connection with a Federal election. 2 U.S.C. 441b(a). For the purposes of this prohibition, the term "contribution or expenditure" includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value ... to any candidate, [or] campaign committee ... in connection with any" Federal election. 2 U.S.C. 441b(b)(2). Commission regulations define "anything of value" as "the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services." 11 CFR 100.7(a)(1)(iii).

In the past, the Commission has concluded that the receipt of complimentary items or the purchase of goods at a discount does not result in a contribution if the discounted or complimentary goods were available to others on equal terms or as part of a pre-existing business relationship. See Advisory Opinions 1992-24 and 1987-24. Therefore, since the discount offered to the Committee is available to other organizations and corporations in similar circumstances, the granting of the discount to the Committee would not be a contribution by the publisher to the Committee.

#### Distribution of the copies

The Commission has previously stated that, under the Act and Commission regulations, a candidate's campaign committee has wide discretion in making expenditures to influence the candidate's election; except that excess campaign funds may not be converted by any person to any personal use. 2 U.S.C. 431(9) and 439a; Advisory Opinions 1992-12, 1993-1 and 1993-6.<sup>3/</sup> In the past, latitude has been given to committees to use campaign funds for continuing campaign activity, and such uses are reported as operating expenses of the Committee. Relevant examples of these expenses include sending holiday greeting cards to thank former campaign staff (Advisory Opinion 1980-123) and providing memento items and special receptions for contributors (Advisory Opinion 1983-5). In Advisory Opinion 1981-2, the Commission indicated that the standard was whether the described activity had "an election influencing purpose, either retrospective or prospective."<sup>4/</sup> The Commission concludes that the distribution of copies of your biography by your campaign committee to former campaign staff or volunteers and past contributors as gifts of appreciation or "thank you's" would be consistent with these prior opinions and would not constitute a prohibited conversion of campaign funds to personal use.

The Commission expresses no opinion regarding the applicability of the Rules of the Senate in the situation you have described, nor does it express any opinion as to any tax ramifications of the proposed transaction, because these issues are not within 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)

Scott E. Thomas  
Chairman

Enclosures (AOs 1993-6, 1993-1, 1992-24, 1992-12, 1987-24, 1983-5, 1981-2, and 1980-123)

Endnotes

1/ Your request contains information from the publisher, Random House, Inc. describing this particular discount as generally available to other corporations and organizations making bulk purchase orders in circumstances similar to those of the Committee.

2/ The undiscounted price of the book is \$24. You also state that members of your staff will purchase 75 copies of the book, and their book order will be combined with the Committee's. You state that these purchases are voluntary. It also appears from the information provided by the publisher that these additional purchases are not large enough to increase the amount of the discount. Your October 21, letter also indicated that family members might purchase the book, but a subsequent conversation with your staff indicated that family members will not order any copies.

3/ You are a Member of the 103rd Congress and are, therefore, prohibited from converting campaign funds to personal use. The Commission is currently engaged in a rulemaking to offer guidance on what constitutes personal use of campaign funds. See 58 Fed. Reg. 45463 (August 30, 1993).

4/ According to the Committee's most recent report, the 1993 mid year report, the Committee has received \$2,300 in contributions designated toward the 1998 primary and has made \$1,410 in expenditures for the 1998 primary.