



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Jul 20 10 07 AM '95

July 20, 1995

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael G. Marinelli
Staff Attorney

SUBJECT: Draft AO 1995-21

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for July 27, 1995.

Attachment

AGENDA ITEM
For Meeting of: JUL 27 1995

DRAFT

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-21

Peter B. Crary, Treasurer
Larson for Life for U.S. Senate Committee
Fargo, ND 58107

Dear Mr. Crary:

This refers to your letters dated May 17, and May 30, 1995, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the future receipt and use of funds by the Larson for U.S. Senate Committee.

Larson for U.S. Senate Committee ("the Committee") is the principal campaign committee of Darold Larson. Mr. Larson was a candidate for election to the U.S. Senate in the special election held on December 4, 1992. You state that an incorporated entity obtained a judgment against Mr. Larson in 1988, prior to the formation of the committee. During the course of Mr. Larson's 1992 Senate campaign, this entity, through the use of the Sheriff's office of Cass County, North Dakota, attempted to collect on the debt by seizing the Committee's broadcast videotapes from local TV stations. Following the end of the campaign, the Committee sued the local Sheriff's office for damages. A local North Dakota court found for the Committee and, in subsequent negotiations with the Sheriff's office, the Committee was to receive \$1,500 in settlement of its damages claim. You state that the Committee has no outstanding debts and no plans regarding

4 how the money might be spent.

5 Your inquiry centers on the receipt and use of the
6 settlement funds. You ask whether the settlement funds may
7 be accepted by the Committee and whether the Act imposes any
8 limit on the amount received. You also seek advice on the
9 correct way these funds should be reported if the Committee
10 is permitted to accept them. Finally, you ask whether the
11 Committee may pay a reasonable percentage of these funds to
12 the Committee's attorney who represented the Committee in the
13 legal proceedings and negotiated the settlement.^{1/}

14 Under the Act, the term contribution includes any gift,
15 subscription, loan, advance, or deposit of money or anything
16 of value made by any person for the purpose of influencing
17 any election for Federal office. 2 U.S.C. §431(8)(A).

18 The Act and Commission regulations recognize, however,
19 that, under certain circumstances, political committees may
20 receive funds that are not contributions from the payor.
21 Examples of such funds would be interest paid by a bank on
22 committee balances in depository accounts, which earn
23 interest in the ordinary course of business (Advisory Opinion
24 1981-6); or promotional offers and rebates by vendor given to

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26 ^{1/} Your initial May 17 letter also inquired whether a
27 possible condition of the settlement agreement requiring that
28 the Committee maintain confidentiality about the amount
29 received could be harmonized with the disclosure requirements
30 of the Act. You subsequently stated in your May 30 letter
that no demand was made and you "see no reason why the
Committee cannot fully report the amount and source of the
settlement funds." This issue, now rendered hypothetical,
will not be addressed in this opinion.

3 committees on the same basis as afforded to other purchasers
4 of services (Advisory Opinions 1994-10, 1993-20 and 1987-24).
5 The Commission has also viewed in the same way amounts paid
6 by vendors to political committees in compensation for the
7 failure to deliver services. See Advisory Opinion 1986-1.

8 While not precisely falling into these categories, the
9 circumstances of your request are similar so that the
10 Commission concludes that funds received to settle a
11 political committee's legal claim also fall outside the
12 definition of contribution under the Act. The receipt of
13 these funds is not subject to the contribution limits of 2
14 U.S.C. §441a. Therefore, the Committee may accept the \$1,500
15 paid in settlement of its damages claim against the Sheriff's
16 office of Cass County. However, the Committee must report
17 and itemize the receipt of \$1,500. See 2 U.S.C.
18 §434(b)(3)(G) and 11 CFR 104.3(a)(4)(vi).^{2/}

19 You also inquire regarding the use of part of the \$1,500
20 for the payment of attorney's fees arising from the
21 litigation. Under the Act and new Commission regulations, a
22 candidate and the candidate's campaign committee have wide
23 discretion in making expenditures to influence the
24 candidate's election, but may not convert excess campaign
25 funds to personal use. 2 U.S.C. §§431(9) and 439a; 11 CFR

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28 ^{2/} The Committee must identify the amount, date and payor of
29 the award. The receipt of the \$1,500 should be listed on
30 line 15 in the "other receipt" category of the Committee's
next appropriate report and should be itemized on Schedule A
with that report.

3 113.1(g) and 113.2; see also Advisory Opinion 1995-20.^{3/}

4 The Commission's revised regulations provide guidance
5 regarding what would be considered personal use of campaign
6 funds. Personal use is defined as "any use of funds in a
7 campaign account of a present or former candidate to fulfill
8 a commitment, obligation or expense of any person that would
9 exist irrespective of the candidate's campaign or duties as a
10 Federal officeholder." 11 CFR 113.1(g)

11 Legal expenses are not listed among those expenditures
12 that would be considered per se personal use.^{4/} The
13 regulations state that the Commission will determine on a
14 case by case basis whether uses of funds in a campaign
15 account for legal expenses would fulfill a commitment,
16 obligation or expense that would exist irrespective of the
17 candidate's campaign or duties as a Federal officeholder,
18 and, therefore, would be personal use. 11 CFR
19 113.1(g)(1)(ii)(A).

20 In discussing application of the case by case approach
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22 ^{3/} The relevant new regulations were published in the Federal
23 Register on February 9, 1995, (60 Fed. Reg. 7862) with an
24 effective date of April 5, 1995 (60 Fed. Reg. 17193). The
25 rules will be published in the 1996 edition of the Code of
26 Federal Regulations at 11 CFR 100.8(b)(22), 104.3(b)(4),
27 113.1(g), and 113.2.

28 ^{4/} Under section 113.1(g)(1)(i), personal use includes but is
29 not limited to funds used for the following items: household
30 food items; funeral, cremation or burial expenses; clothing;
tuition payments not associated with training campaign staff;
mortgage, rent or utility payments; tickets to non-campaign
or non-officeholder entertainment; dues, fees or gratuities
to nonpolitical organizations unless related to a specific
fundraising event; and salary payments to family members
unless paid for bona fide, campaign-related services.

3 to the permissible use of campaign funds for legal expenses,
4 the Commission stated that legal service expenses would
5 include those related to compliance with election laws, but
6 would not be restricted only to those purposes. See 60 Fed.
7 Reg. 7868 (February 9, 1995).

8 The legal expenses described in your request pertain to
9 a law suit arising directly from campaign activity and Mr.
10 Larson's status as a candidate. Applying the standard
11 established by section 113.1(g)(1)(ii), these expenses are
12 clearly attributable to the campaign. Therefore, campaign
13 funds, including the \$1,500 received in settlement of the
14 lawsuit, may be used to pay the expenses of the Committee in
15 the described law suit and related negotiations.

16 The cost of legal expenses consistent with this advisory
17 opinion should be reported as an operating expenditure by
18 the Committee, with the purpose noted. See 11 CFR
19 104.3(b)(2) and (b)(4)(i); see also Advisory Opinion 1995-20.

20 The Commission expresses no opinion regarding any tax
21 ramifications of the proposed transaction, because these
22 issues are not within its jurisdiction.

23 This response constitutes an advisory opinion concerning
24 application of the Act, or regulations prescribed by the Com-

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mission, to the specific transaction or activity set forth in
your request. See 2 U.S.C. §437f.

Sincerely,

Danny L. McDonald
Chairman

Enclosures (AOs 1995-20, 1994-10, 1993-20, 1987-24, 1986-1
and 1981-6)