



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 28, 1995

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 how the money might be spent.

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

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

The Act and Commission regulations recognize, however, that, under certain circumstances, political committees may receive funds that are not contributions from the payor. Examples of such funds would be interest paid by a bank on committee balances in depository accounts, which earn interest in the ordinary course of business (Advisory Opinion 1981-6); or promotional offers and rebates by vendor given to committees on the same basis as afforded to other purchasers of services (Advisory Opinions 1994-10, 1993-20 and 1987-24). The Commission has also viewed in the same way amounts paid by vendors to political committees in compensation for the failure to deliver services. See Advisory Opinion 1986-1.

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

You also inquire regarding the use of part of the \$1,500 for the payment of attorney's fees arising from the litigation. Under the Act and new Commission regulations, a candidate and the candidate's campaign committee have wide discretion in making expenditures to influence the candidate's election, but may not convert excess campaign funds to personal use. 2 U.S.C. 431(9) and 439a; 11 CFR 113.1(g) and 113.2; see also Advisory Opinions 1995-23 and 1995-20.^{3/}

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

Legal expenses are not listed among those expenditures that would be considered per se personal use.^{4/} The regulations state that the Commission will determine on a case by case basis whether uses of funds in a campaign account for legal expenses would fulfill a commitment, obligation or expense that would exist irrespective of the candidate's campaign or duties as a Federal officeholder, and, therefore, would be personal use. 11 CFR 113.1(g)(1)(ii)(A). See Advisory Opinion 1995-23.

In discussing application of the case by case approach to the permissible use of campaign funds for legal expenses, the Commission stated that legal service expenses would include those related to compliance with election laws, but would not be restricted only to those purposes. See 60 Fed. Reg. 7868 (February 9, 1995); see also Advisory Opinion 1995-23.

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

The cost of legal expenses consistent with this advisory opinion should be reported as an operating expenditure by the Committee, with the purpose noted. See 11 CFR 104.3(b)(2) and (b)(4)(i); see also Advisory Opinion 1995-23.

The Commission expresses no opinion regarding 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)

Danny L. McDonald
Chairman

Enclosures (AOs 1995-23, 1995-20, 1994-10, 1993-20, 1987-24, 1986-1 and 1981-6)

1 Your initial May 17 letter also inquired whether a possible condition of the settlement agreement requiring that the Committee maintain confidentiality about the amount received could be harmonized with the disclosure requirements 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.

2 The Committee must identify the amount, date and payor of the award. The receipt of the \$1,500 should be listed on 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 The relevant new regulations were published in the Federal Register on February 9, 1995, (60 Fed. Reg. 7862) with an effective date of April 5, 1995 (60 Fed. Reg. 17193). The rules will be published in the 1996 edition of the Code of Federal Regulations at 11 CFR 100.8(b)(22), 104.3(b)(4), 113.1(g), and 113.2.

4 Under section 113.1(g)(1)(i), personal use includes but is not limited to funds used for the following items: household 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.