



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 5, 1996

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-46

Benjamin L. Ginsberg
Patton Boggs, L.L.P.
2550 M Street, N.W.
Washington, D.C. 20037

Dear Mr. Ginsberg:

This responds to your letter dated December 4, 1995, requesting an advisory opinion on behalf of Friends of Senator D'Amato ("the Committee") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use of campaign funds to purchase copies of the candidate's autobiography.

The Committee is the principal campaign committee of Senator Alfonse D'Amato for re-election to the U.S. Senate in 1998.¹ Recently, Senator D'Amato wrote his autobiography, *Power, Pasta & Politics*. The book was published by Hyperion, a part of Disney Book Publishing, Inc., and has been distributed for sale at book stores around the country. The Senator's book contract with Hyperion provided for advance payments against sums due the author for sales of the book. The contract provides that, once the amount of the advance is reached in sales, the Senator will receive royalty payments. In anticipation of that occurrence, Senator D'Amato has assigned all rights to the payment of royalties from the book sales to Chaminade High School in Mineola, New York. You state Senator D'Amato will treat the royalties assigned to Chaminade as his income for tax purposes, and he will take the appropriate charitable deduction.

The Committee proposes to use campaign funds to purchase up to several thousand copies of the book to be used solely in campaign related activities, such as distributing signed and unsigned copies to financial contributors and other "political supporters" as "thank you" gifts. The Committee would, for example, offer copies of the book through its direct mail solicitations to those who contribute above a certain amount. The Committee will not sell the

copies it purchases, or ask that they be purchased. You state that all uses of the book by the Committee will be for the purpose of influencing a Federal election, and the quantity purchased will not exceed the number needed for those campaign purposes.

You state that the negotiations for the Committee's purchase of the books will be conducted at arm's length. The Committee wishes to use any "bulk rate" purchase prices that may be available for the number of books purchased. The bulk rate the Committee would pay is the standard fair market price that publishers, under normal industry practice, make available to large purchasers subject to several conditions. Among these conditions are the stipulations that the book not be resold through normal book distribution channels, and that the author receives no royalties on those copies purchased by him under the bulk rate.

The Committee wishes to confirm that the transactions described above would not constitute a personal use of campaign funds by Senator D'Amato or a contribution by the publishing company to the Committee.

Under the Act and 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 1995-42, 1995-26 and 1995-23. Commission 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). Commission regulations list a number of purposes that would constitute personal use. 11 CFR 113.1(g)(1)(i). Where a specific use is not listed as personal use, the Commission makes a determination on a case-by-case basis. 11 CFR 113.1(g)(1)(ii).²

You represent that the books to be purchased by the Committee will be used solely in campaign related activities, including distribution to contributors and other political supporters. The Commission assumes that the book copies purchased by the Committee will not be offered or made available to persons who do not make contributions to the Committee, to persons who otherwise are not "political supporters" of Senator D'Amato's campaign for re-election to the U.S. Senate in 1998, or where the distribution is primarily for a purpose unrelated to the Senator's 1998 campaign. The Commission notes that the Committee will not purchase any more books than are needed for campaign-related purposes. It appears therefore that the proposed use of the Committee's funds would fulfill an expense that exists because of Senator D'Amato's campaign activities. See 11 CFR 113.1(g); see also Advisory Opinion 1995-23.

The fact that Senator D'Amato will not receive proceeds from the proposed transactions also indicates that personal use of campaign funds will not result.³ You explain that one condition for the publisher's sale to the Committee is that the author receives no royalties from the sale.⁴ Furthermore, no royalties will result from the Committee's distribution of the books because the Committee does not plan to sell the books.⁵

The Committee wishes to avoid an in-kind corporate contribution from the publisher in connection with the bulk purchase of the books. See 2 U.S.C. 441b(a); 11 CFR 114.2(b). The term "contribution" includes giving "anything of value" for the purpose of influencing an election. 2 U.S.C. 431(8)(A)(i) and 441b(b)(2); 11 CFR 100.7(a)(1) and 114.1(a)(1). The term "anything of value" includes the provision of goods or services at less than the usual and normal charge. 11 CFR 100.7(a)(1)(iii)(A). The "usual and normal charge" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. 11 CFR 100.7(a)(1)(iii)(B). In the past, the Commission has concluded that the purchase of goods or services at a discount does not result in a contribution when the discounted items are available on equal terms to other customers that are not political organizations or committees. Advisory Opinions 1994-10, 1993-20, and 1989- 14. Your description of the proposed transaction indicates that the Committee will pay the usual and normal charge for this type of bulk purchase from publishers and thus would not receive an in-kind corporate contribution.

The Commission expresses no opinion regarding the application of any rules of the United States Senate or any tax ramifications of the proposed activity, because those 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 this request.

Sincerely,

(signed)

Lee Ann Elliott
Chairman

Enclosures (AOs 1995-42, 1995-26, 1995-24, 1995-23, 1995-8, 1994-10, 1993-20, and 1989-14)

1 Senator D'Amato filed his Statement of Candidacy for the 1998 U.S. Senate election cycle on July 28, 1993.

2 In explaining the application of the case-by-case approach, the Commission

reaffirm[ed] its long-standing opinion that candidates have wide discretion over the use of campaign funds. If the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.

Explanation and Justification, Commission Regulations on Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (February 9, 1995).

3 The Commission notes, however, that it has previously concluded that the regulations on personal use permit a candidate and his professional corporation to charge his campaign committee the usual and normal charge for rental of an office and equipment. Advisory Opinion

1995-8. A usual and normal charge would often, but not always, include profit for the vendor. In addition, the Commission has permitted a candidate to sell copies of his self-published book in bulk to his campaign committee, at the market price for such sales, so that the committee could sell the book to the public and use the proceeds to repay debts owed to the candidate. Advisory Opinion 1995-24.

4 The Commission assumes that the contractual provision on purchases by the author applies, as well, to purchases by the Committee.

5 In addition, any future royalties that could otherwise result from the sale to the Committee will be assigned to Chaminade High School. Such royalties may result if book sales have not yet reached the level triggering the payment of royalties, and the bulk purchase by the Committee brings total sales up to, or past, that level.