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FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 12, 1997

A G E N D A I T E M
For Meeting of: 6-19-97

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 1997-06

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for June 19, 1997.

Attachment

DRAFT

1 ADVISORY OPINION 1997-6
2

3 Kenneth W. Anderson, Jr., Treasurer
4 Kay Bailey Hutchison for Senate
5 PO Box 9190
6 Dallas, Texas 75209
7

8 Dear Mr. Anderson:

9
10 This responds to your letter dated May 15, 1997, on behalf of Kay Bailey Hutchison
11 for Senate (the "Committee"), the principal campaign committee of Senator Kay Bailey
12 Hutchison, concerning application of the Federal Election Campaign Act of 1971, as
13 amended ("the Act"), and Commission regulations to the deposit of certain investment
14 funds received by the Committee.

15 Specifically, the Committee asks whether section 103.3(a) of Commission
16 regulations requires the Committee to transfer investment income, received by the
17 Committee, into its depository checking account before such investment proceeds are
18 reinvested in the Committee's investment accounts. You explain that the Committee
19 maintains a checking account with a national banking association, as required by the Act
20 and Commission regulations. You affirm that, other than certain investment income, all
21 moneys received by the Committee are deposited into this checking account, including
22 without limitation, all contributions, rebates, refunds, reimbursements and other receipts
23 from third parties. You further explain that all disbursements of the Committee are made
24 out of this checking account. However, you indicate that Committee funds not
25 immediately needed for expenses are invested in money-market funds and United States
26 Government securities.

1 You state that the investments are made through and held in investment accounts
2 maintained with a securities investment firm. The investment income is received in the
3 form of interest, dividends and gains on the sale or maturity of securities. You explain
4 that, in order to achieve the maximum return, investment income received is automatically
5 and directly reinvested in money-market funds maintained in the investment account.
6 Furthermore, you state that all income earned from these investments is fully disclosed on
7 Committee reports filed with the Commission for the period when the income is received.
8 The receipts are listed on Line 15(Other Receipts) of the Detailed Summary Page and are
9 itemized on an appropriate Schedule A filed with the Committee's FEC FORM 3 Report
10 of Receipts and Disbursements.

11 The Act and Commission regulations require that each political committee designate
12 at least one State bank, or Federally chartered depository institution (or another depository
13 institution if the depository accounts of that entity are insured by the Federal Deposit
14 Insurance Corporation or the National Credit Union Administration) as its campaign
15 depository. All receipts received by the committee shall be deposited in the checking
16 account or accounts maintained in its campaign depository. 2 U.S.C. §432(h)(1), 11 CFR
17 103.2. No disbursements, other than petty cash, may be made by such committee except
18 by check drawn on such accounts. 11 CFR 103.3(a), see 2 U.S.C. §432(h) and 11 CFR
19 102.11.

20 Political committees are permitted to transfer campaign funds for investment
21 purposes to other accounts. However, these funds must be returned to the campaign
22 depository account before they can be used to make expenditures. 11 CFR 103.3(a); see
23 also Advisory Opinions 1986-18 and 1980-39.

1 The Commission notes that section 103.3(a) states that all receipts must be placed
2 in an account with the political committee's designated depository. Interest and dividend
3 income constitute "other receipts" which must be reported. See 2 U.S.C. §434(b)(2)(J) and
4 §434(b)(3)(G). These fall under the section 103.3(a) requirement to be placed in an
5 account of the committee's depository. Read literally, section 103.3(a) would seem to
6 require that earned interest and dividend income would always have to be re-deposited in
7 the campaign depository account prior to reinvestment in the investment account.

8 However, the regulation may be read in another manner which fully serves its
9 underlying purpose and also comports with the related disclosure requirements of the Act
10 and Commission regulations. The last sentence of section 103.3(a) pertains to the special
11 situation of investment funds and requires that these funds be returned back to the
12 campaign depository before they "are used to make expenditures." The Commission notes
13 Advisory Opinion 1980-39 concluded that transfers of funds out of the campaign
14 depository for investment purposes are not considered expenditures by a political
15 committee under 11 CFR 100.8. They are, instead, a conversion of one form of "cash on
16 hand" to another.¹ It follows then, that the reinvestment of funds earned from committee
17 investments would also not be considered an expenditure by a political committee which
18 would require a re-transfer back to the campaign depository. This interpretation is more
19 consistent with the regulations and prior opinions that have expressly permitted the deposit
20 of campaign funds in investment accounts. As your request notes, the use of these
21 investment accounts is not feasible or viable without the typical and necessary automatic

¹ Under 11 CFR 104.3(a)(1), cash on hand includes "...certificates of deposit, treasury bills and any other committee investments valued at cost."

1 reinvestment of accrued interest or other earnings credited directly to such accounts by the
2 payer.

3 Therefore, considering these factors together, the Commission concludes that section
4 103.3(a) does not require that interest or other income earned on and credited to the
5 Committee’s investment accounts be physically redeposited into the Committee’s
6 campaign depository before it can be reinvested into the Committee’s investment
7 accounts. The Commission notes that the Committee must continue to disclose timely, as
8 required by the Act and Commission regulations, all income earned through its investment
9 activity, even if such income is directly reinvested in its investment accounts.² In
10 addition, all funds in its investment accounts must be transferred to a campaign depository
11 account before they are disbursed for a Committee operating expenditure or other non-
12 investment purpose.

13 This response constitutes an advisory opinion concerning the application of the
14 Act, or regulations prescribed by the Commission, to the specific transaction or activity
15 set forth in your request. See 2 U.S.C. §437f.

Sincerely,

**John Warren McGarry
Chairman**

24 Enclosures (AOs 1986-18 and 1980-39)

² The Commission also notes that the Committee is obligated to retain and preserve all account statements and similar records provided by the various financial and investment institutions which show the interest and dividends that have accrued in its accounts. See 11 CFR 102.9 and 104.14(b).