

AGENDA ITEM

For Meeting of: 7-31-97



FEDERAL ELECTION COMMISSION

Washington, DC 20463

July 24, 1997

7-24-97
4:25 PM '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 1997-10

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for July 31, 1997.

Attachment

1 ADVISORY OPINION 1997-10

DRAFT

2
3 Patrick J. Alcox
4 Attorney-at-Law
5 75 Public Square, Suite 650
6 Cleveland, Ohio 44113

7
8 Dear Mr. Alcox:

9
10 This responds to your letter dated June 14, 1997, on behalf of Hoke for Congress
11 Committee ("the 1992 Committee") and Hoke for Congress 96 ("the 1996 Committee"),
12 the principal campaign committees of former Representative Martin Hoke, concerning
13 application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and
14 Commission regulations to various transactions by both committees in the 1996 election
15 cycle.

16 Mr. Hoke won the 1996 Republican primary, but was not re-elected in the 1996
17 general election, and seeks advice on the proper procedure to follow regarding the
18 termination of both committees. Your request presents specific actions that you propose
19 in order to terminate the filing status of both committees. These relate to transfers of
20 funds between the 1992 Committee and the 1996 Committee.

21 Mr. Hoke was the Republican candidate for Congress from the 10th Congressional
22 District of Ohio in 1992. At that time he established the 1992 Committee and loaned the
23 committee \$254,000 of his own funds. He was elected in 1992 and the 1992 Committee
24 repaid him \$80,000 of the loan, leaving an outstanding and unpaid debt to Mr. Hoke of
25 \$174,000.

26 You state that, during the 1996 election cycle, approximately 92 individuals, who
27 had contributed the maximum lawful amount to the 1996 Committee, wished to

1 contribute to the expenses still outstanding from the 1992 campaign. Each of them, you
2 explain, had also earlier contributed \$1,000 toward the 1992 election.¹ The total
3 additional amount contributed by this group to the 1992 Committee was \$91,652. You
4 further explain that the net outstanding debt of the 1992 Committee was solely the
5 remaining unpaid balance (\$174,000) due to the candidate.² However, instead of using
6 the \$91,652 to pay this debt to Mr. Hoke (who would then presumably lend the same
7 amount to the 1996 campaign), the 1992 Committee directly transferred the \$91,652 to
8 the 1996 Committee.

9 You have proposed a method to make corrective transfers that would allow both
10 committees to terminate. You propose that Mr. Hoke would loan \$91,652 to the 1996
11 Committee which, in turn, would transfer that amount to the 1992 Committee. The 1992
12 Committee would then pay these funds to Mr. Hoke in order to retire \$91,652 of the net
13 outstanding debt owed to him for the personal loan that he previously made to the 1992
14 Committee. You state that Mr. Hoke would then forgive the remaining \$82,347 debt that
15 is owed to him by the 1992 Committee.

16 As your request states, under 11 CFR 116.2(c)(2), no transfers of funds may be
17 made from a candidate's authorized committee to another authorized committee of the
18 same candidate if the transferor committee has net debts outstanding at time of the

¹ For the same reasons noted below with reference to the proper use of the advisory opinion process, the Commission notes that this opinion does not reach any issues concerning any possible violations of the contribution limits of 2 U.S.C. §441a by those who made contributions to either committee or by the committees that accepted those contributions. See 2 U.S.C. §441a(f).

² The 1992 Committee's 1996 Year End Report substantiates your statement. The 1996 Committee's Year End Report (for 1996) shows that its only remaining obligation is a \$30,750 disputed liability for debt.

1 transfer under the formula described in 11 CFR 110.1(b)(3)(ii).³ Therefore, the
2 Commission would agree with your admission that the described transfer was prohibited
3 under the cited Commission regulations. However, the advisory opinion process
4 contemplates only future proposed transactions, or activity that is already under way and
5 may continue in the future. See 11 CFR 112.1(b). Therefore, this opinion does make any
6 findings or determinations as to whether the past transfers made by the 1992 Committee
7 would represent violations of law under 2 U.S.C. §437g(a).

8 Under the Act and Commission regulations, the principal campaign
9 committee of a candidate is required to file reports of its receipts and disbursements. 2
10 U.S.C. §434(a)(2). In general, a political committee may terminate its filing obligations
11 and status only upon filing a valid termination report on the appropriate FEC form, or
12 upon filing a written statement containing the same information. 11 CFR 102.3(a)(1), see
13 2 U.S.C. §433(d)(1). Only a committee which will no longer receive any contributions or
14 make any disbursements that would otherwise qualify it as a political committee may
15 terminate, provided that such committee has no outstanding debts and obligations. The
16 committee shall submit a final report of receipts and disbursements that includes a
17 statement as to the purpose for which any residual funds will be used, including a
18 statement as to whether such residual funds will be used to defray expenses incurred in
19 connection with an individual's duties as a holder of Federal office. *Id.*⁴

³ In order to determine whether there are net debts outstanding from a particular election, the treasurer of the candidate's authorized political committee shall calculate the net debts outstanding as of the date of the election. 11 CFR 110.1(b)(3)(ii).

⁴ An authorized committee of a candidate shall include in its termination report a statement that no noncash committee assets will be converted to personal use. 11 CFR 102.3(a)(2). A principal campaign committee may not terminate until it has met the cited requirements and until all debts of any other authorized committee(s) of the candidate have been extinguished. 11 CFR 102.3(b) and 116.7(a). The

1 Under the Act and Commission regulations, a candidate for Congress may make
2 unlimited expenditures from personal funds. This permits such candidates to make loans
3 or contributions in unlimited amounts to their own campaigns. 11 CFR 110.10(a). See
4 Advisory Opinions 1995-24 and 1991-9. Therefore, Mr. Hoke may forgive all or part of
5 the loans of personal funds that he made to his 1992 Committee. As noted above, loans
6 made by a candidate to the candidate's own campaign committee are subject to debt
7 settlement, as are other debts owed by political committees. 11 CFR 116.7(b).⁵

8 In these circumstances, the Commission reiterates that the initial transfer of
9 \$91,652 was prohibited by the regulations. This prohibition applies even though that
10 same amount could have been lawfully donated to the 1996 Committee by Mr. Hoke
11 from his personal funds, whether or not those personal funds were comprised of in any
12 part, repayments on loans he made (from personal funds) to the 1992 Committee. Given
13 these circumstances, the Commission, does not object to the corrective transfer procedure
14 which you have presented. The Commission notes, however, that the debt settlement
15 process must be followed before termination reports will be accepted from both
16 committees.

terminating committee shall also file a debt settlement plan after the creditors included in the debt settlement plan have agreed to the settlement or forgiveness of the particular debt(s) owed to each of them. 2 U.S.C. § 433(d)(1). Section 116.7(b) of the regulation lists the types of debts subject to debt-settlement. These include debts arising from loans made by political committees or individuals, including candidates. See 11 CFR 116.7(b)(4).

⁵ Other than the unpaid loans owed to Mr. Hoke by the 1992 Committee, the only reported debt of either committee is a disputed debt with a commercial vendor of the 1996 Committee. Section 116.10(b) outlines procedures for dealing with disputed debt settlements situations. See Advisory Opinions 1995-7 and 1989-2.

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

Sincerely,

John Warren McGarry
Chairman

12 Enclosures (AOs 1995-24, 1995-7, 1991-9 and 1989-2)

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