

Elizabeth Johnson
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FEDERAL ELECTION COMMISSION

Washington, DC 20463

February 25, 1998

MEMORANDUM

AGENDA ITEM

For Meeting of: 3-5-98

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael Marinelli
Staff Attorney

SUBJECT: Alternative Draft Advisory Opinion 1997-28, with
revised draft to Agenda Document #98-14.

Attached is an alternative draft of the subject advisory opinion, as requested by the Commission at the meeting of February 12, 1998. This draft is identified by the hand inscribed letter **A** in the upper right corner of each page. Also attached is a revised draft of Agenda Document #98-14.

Both drafts denote new or revised language with the use of **bold font**. The alternative draft concludes that the 1996 committee may be reinstated, and the revised draft concludes to the contrary.

We request that both drafts be placed on the agenda for March 5, 1998.

Attachments

DRAFT

A

1 **ADVISORY OPINION 1997-28**

2

3 **W. Ben Bius**

4 **P.O. Box 6153**

5 **Huntsville, Texas 77342-6153**

6

7 **Dear Mr. Bius:**

8 **This refers to your December 11, 1997, letter which requests an advisory opinion**
9 **regarding the application of the Federal Election Campaign Act of 1971, as amended**
10 **("the Act"), and Commission regulations to your proposal to re-activate your campaign**
11 **committee.**

12 **You were a candidate in the 1996 Republican primary to nominate a candidate to**
13 **represent the 2nd Congressional District of Texas. Your principal campaign committee**
14 **was the Ben Bius Committee ("the Committee"). The Committee filed its amended**
15 **termination report on July 15, 1996. As part of the termination process, you forgave**
16 **\$92,000 in campaign loans made from your personal funds to the Committee. However,**
17 **subsequent to the termination and debt forgiveness, you discovered that you had received**
18 **erroneous information from a third party Certified Public Accountant. You further**
19 **elaborate that the CPA represented that the debt owed by the Committee to you, if**
20 **forgiven, would be deductible against capital gains under the tax code. You apparently**
21 **relied upon this erroneous advice.**

22 **Given these circumstances, you now wish to reinstate the Committee and "reverse"**
23 **or revoke your forgiveness of the unpaid loans in order to engage in further fundraising to**
24 **"repay" the reinstated debt. You ask whether this plan is permitted by the Act and**
25 **Commission regulations.**

A
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1 Under the Act and Commission regulations, the principal campaign
2 committee of a candidate is required to file reports of its receipts and disbursements. 2
3 U.S.C. §434(a)(2). In general, a political committee may terminate its filing obligations
4 and status only upon filing a valid termination report on the appropriate FEC form, or
5 upon filing a written statement containing the same information. 11 CFR 102.3(a)(1), see
6 2 U.S.C. §433(d)(1). Only a committee which will no longer receive any contributions or
7 make any disbursements that would otherwise qualify it as a political committee may
8 terminate, provided that such committee has no outstanding debts and obligations. The
9 committee shall submit a final report of receipts and disbursements that includes a
10 statement as to the purpose for which any residual funds will be used, including a
11 statement as to whether such residual funds will be used to defray expenses incurred in
12 connection with an individual's duties as a holder of Federal office. *Id.*¹

13 The Act further requires that the reports filed by a candidate's principal campaign
14 committee disclose, among other transactions, all loans made by or guaranteed by the
15 candidate, as well as contributions from the candidate. 2 U.S.C. §§434(b)(2)(B),(G) and
16 434(b)(8). See also 11 CFR 104.3(a)(4)(iv) and 104.3(d). Debts and obligations owed by
17 (or to) a political committee which remain outstanding shall be continuously reported until
18 extinguished. 11 CFR 104.11.

¹ 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 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).

A

1 In past opinions, the Commission has concluded that, in general, once a political
2 committee has properly wound up its activities and filed a valid termination report, its
3 existence comes to an end. See Advisory Opinions 1977-58 and 1977-43; compare with
4 Advisory Opinion 1980-114. For example, ⁱⁿ the 1977 ^{opinion}, the Commission
5 refused to permit a candidate to reactivate a terminated principal campaign committee in
6 order to accept or raise contributions to pay for previously forgiven candidate debt.²
7 However, in Advisory Opinion 1980-114, the candidate was permitted to receive the
8 proceeds of an unexpected media refund where he had already terminated his committee
9 and forgiven the debt owed to him by the committee. The Commission notes that your
10 situation is ~~closer to that described in Advisory Opinion 1980-114 and~~
11 distinguishable from the earlier two opinions, since you are dealing with ^a ~~an~~
12 ~~unanticipated~~ ^{unique mistake stemming from} event, the erroneous advice which you received regarding the tax
13 consequences of forgiving the debt owed to you by the Committee. Therefore, the
14 Commission concludes that you may reinstate the committee, revoke your prior
15 forgiveness of the \$92,000 in loans made by you to the Committee and now engage in
16 new fundraising to retire the revived debt owed to you by the Committee. Any
17 contributions raised will be subject to the limits and prohibitions of the Act and
18 Commission regulations. See 2 U.S.C. §§439a, 441a, 441b, 441c, 441e and 441f.³

² Of course the situation has been treated differently if a committee has not yet terminated. The Commission has permitted the candidate to recover personal funds the candidate donated to the committee to make refunds to other contributors which were themselves subsequently refused by those contributors (Advisory Opinion 1980-147), and to accept media refunds prior to termination where a committee owes the candidate an unforgiven debt (Advisory Opinion 1979-5).

³ In particular, the Commission reminds you that any person or committee who already had previously given to your 1996 primary campaign the maximum amount permitted by 2 U.S.C. §441a(a) may not make any additional contributions to the Committee. See 11 CFR 110.2(g).

DRAFT

1 ADVISORY OPINION 1997-28

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4 and status only upon filing a valid termination report on the appropriate FEC form, or
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12 connection with an individual's duties as a holder of Federal office. *Id.*¹

13 The Act further requires that the reports filed by a candidate's principal campaign
14 committee disclose, among other transactions, all loans made by or guaranteed by the
15 candidate, as well as contributions from the candidate. 2 U.S.C. §§434(b)(2)(B),(G) and
16 434(b)(8). See also 11 CFR 104.3(a)(4)(iv) and 104.3(d). Debts and obligations owed by
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¹ 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 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).

1 In past opinions, the Commission has concluded that once a political committee has
2 properly wound up its activities and filed a valid termination report, its existence comes
3 to an end. See Advisory Opinions 1977-58 and 1977-43; compare with Advisory
4 Opinion 1980-114. For example, in the 1977 opinions, the Commission refused to permit
5 a candidate to reactivate a terminated principal campaign committee in order to accept or
6 raise contributions to pay for previously forgiven candidate debt.² However, in Advisory
7 Opinion 1980-114, the candidate was permitted to receive the proceeds of an unexpected
8 media refund where he had already terminated his committee and forgiven the debt owed
9 to him by the committee. Your situation is closer to that described in the two earlier
10 opinions and distinguishable from Advisory Opinion 1980-114. Rather than accepting
11 the benefit of an unexpected windfall as in Advisory Opinion 1980-114, you are instead
12 seeking, more than one and a half years after the valid termination of the Committee,
13 permission to reinstate the Committee in order to begin new fundraising to retire the
14 previously forgiven debt.

15 Also relevant to your situation are the Commission's more recent opinions
16 regarding the repayment to candidates of loans they made to their own campaign
17 committees. See Advisory Opinions 1991-9 and 1986-45. The Commission has
18 permitted a candidate to modify the still prospective terms of a loan agreement with a
19 principal campaign committee. See Advisory Opinion 1986-45. However, in Advisory
20 Opinion 1991-9, where a candidate wished to change the rate of interest for loans already

² Of course the situation has been treated differently if a committee has not yet terminated. The Commission has permitted the candidate to recover personal funds the candidate donated to the committee to make refunds to other contributors which were themselves subsequently refused by those contributors (Advisory Opinion 1980-147), and to accept media refunds prior to termination where a committee owes the candidate an unforgiven debt (Advisory Opinion 1979-5).

1 fully repaid to the candidate, the Commission concluded that, while a new interest rate
2 could be applied to any unpaid loan balances, the application of the rate retroactively to
3 repaid loans would be prohibited by 2 U.S.C. §439a and §434(b).

4 Considering these past opinions, the Commission therefore concludes that you
5 may not reinstate your campaign committee, revoke the prior forgiveness of the \$92,000
6 in loans made by you to your committee and now engage in new fundraising to retire the
7 "debt." These retroactive changes are contrary to 2 U.S.C. §434(b) and 2 U.S.C.
8 §433(d)(1). They are also contrary to the underlying policy of the committee termination
9 process which is to bring closure or finality to the filing obligations and financial activity
10 of political committees. The Commission notes that you are no longer a candidate for
11 Federal office, and you have not stated that you will become a candidate for a future
12 Federal election. Therefore, while you may not raise funds on behalf of the terminated
13 committee, this opinion does not prohibit any personal effort by you, or others on your
14 behalf, to solicit and accept donations (or gifts) to help you improve your own personal
15 financial situation, provided that you do not become a candidate for Federal office in
16 any future election.

