



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 17, 2001

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2001-10

The Honorable Jesse L. Jackson, Jr.
P.O. Box 490286
Chicago IL, 60649-9906

Dear Mr. Jackson:

This refers to your letter dated June 8, 2001, requesting advice on the application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to your proposal to have your principal campaign committee hire your wife, Ms. Sandi Jackson, as a consultant.

FACTS

You state your principal campaign committee, Jesse L. Jackson, Jr. for Congress ("the Committee"), plans to employ your wife as a consultant. You explain that, in her capacity as a consultant, Ms. Jackson would provide critical fundraising and administrative support and services for your campaign organization and operations, which you are now in the process of restructuring. It is your view that your wife's considerable experience and expertise would be of great assistance to your re-election and fundraising efforts.

You explain that throughout your wife's career, she has worked in various positions in both campaigns and government. In addition to past employment as chief of staff for former Congressman Cleo Fields and press secretary for the late Representative Mickey Leland, Ms. Jackson has worked in national campaigns, including both the 1988 Dukakis and 1996 Clinton Presidential bids. Most recently, Ms. Jackson has served as Vice President of Congressional and External Affairs for the Export-Import Bank of the United States.

Considering her considerable qualifications and your interest in employing Ms. Jackson, you desire the guidance and counsel of the Commission.¹ You affirm that you want to be certain that all the terms of any future contract between your wife and your campaign committee comply with the Act and Commission regulations. In this regard, you ask whether the hiring of your wife raises any conflicts of interest. You ask what documentation and disclosure are necessary to support such a contractual arrangement between your wife and the Committee. Further, you wish to know what other issues should be considered to avoid any problems in the future.

ACT AND COMMISSION REGULATIONS

The Commission has historically recognized that candidates have wide discretion in making expenditures to influence their election. However, the Act prohibits the conversion of campaign funds to personal use. 2 U.S.C. §439a; 11 CFR 113.2(d); see also Advisory Opinions 2001-03, 2000-40, 2000-37, 2000-12. Commission regulations at 11 CFR 113.1(g) define personal use for the purposes of this prohibition. Generally, personal use is "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). The rules list certain uses of campaign funds that will be considered *per se* personal use. 11 CFR 113.1(g)(1)(i).

Under this regulation, personal use includes the use of funds in a campaign account for the following purposes: household food items or supplies; funeral, cremation or burial expenses; clothing; tuition payments not associated with training campaign staff; mortgage, rent or utility payments for the personal residence of a candidate or his family; admission to sporting events, concerts, or other forms of entertainment, unless part of a specific campaign or officeholder activity; dues, fees or gratuities to a country club, recreational facility, or other nonpolitical organization, unless they are part of the costs of a specific fundraising event on the organization's premises; and salary payments to family members, unless they are fair market value payments for *bona fide*, campaign-related services.² If a family member is providing *bona fide* services to the campaign, any salary payment in excess of the fair market value of the services provided is personal use. 11 CFR 113.1(g)(1)(i)(H).

¹ In a July 3, phone conversation you further stated that while your wife will be working full-time for the campaign, it is possible that she will still handle, and be paid for, occasional consulting work for her current non-political clients.

² Other uses of campaign funds are to be examined on a case-by-case basis using the general definition of personal use. 11 CFR 113.1(g)(1)(ii). These include, but are not limited to, legal expenses, costs of meals, travel, and vehicle expenses. *Id.*

APPLICATION TO PROPOSAL

The Commission concludes that your proposal is permissible under the Act and Commission regulations. The regulations specifically permit salary payments to family members where they are payments for “*bona fide*, campaign related services.” 11 CFR 113.1(g)(1)(i)(H). Regarding the terms of any contract the Committee may enter into with your wife, the Commission notes that as part of the Committee’s requirement to pay family members no more than the fair market value of *bona fide* services, the contract should contain terms customarily found in agreements entered into between paid campaign consultants and candidate committees. It should conform to the standard industry practice for this type of contract. Beyond this, no special obligation is imposed by the Act or Commission regulations.

Your subsequent communications by telephone with the Office of General Counsel indicate that the contract is in writing. To satisfy the record keeping requirements of 11 CFR 104.14(b), the Committee would be required to preserve the contract and other documentation relating to Ms. Jackson’s employment for a period of not less than 3 years after the filing of any report to which those records may relate.³ See also 11 CFR 102.9(b)(1) and Advisory Opinion 2001-03.⁴

You also ask what are the disclosure requirements that are necessary under the Act and Commission regulations for the contractual arrangement. Salary payments are considered operating expenditures and would have to be itemized and reported as any other type of committee operating expenditure. See 11 CFR 104.3(b)(2)(i) and 104.3(b)(4)(i). The Act and Commission regulations do not impose additional disclosure requirements for salary payments made to family members for *bona fide* campaign work.

The Commission expresses no opinion regarding application of any rules of the House of Representatives, or the Ethics in Government Act to the described activities, because these issues are not within its jurisdiction.⁵ For the same reason, the Commission does not express any views as to any Federal or other tax ramifications.

³ Records to be maintained include bank records, receipts, bills, vouchers and worksheets which provide in sufficient detail the necessary information and data. *Id.*

⁴ Under 11 CFR 102.9(b)(1), the Committee is required to maintain an account of all disbursements made by or on behalf of the political committee including (among other information) the name and address of every person to whom any disbursement is made; the date, amount and purpose of the disbursement.

⁵ You specifically ask in your request whether the hiring of your wife “would raise any conflicts of interest.” The Commission notes that its response to any advisory opinion request, again, is strictly limited to the application of the Act and Commission regulations. In this request, its conclusions are limited to whether your proposal is permissible under the personal use regulations discussed above.

This response constitutes an advisory opinion concerning the 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 2001-03, 2000-40, 2000-37, 2000-12)