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FEDERAL ELECTION COMMISSION  
Washington, D.C. 20463

JUL - 5 2001

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon  
Staff Director

FROM: Lois G. Lerner  
Acting General Counsel

N. Bradley Litchfield *NBL (als)*  
Associate General Counsel

Michael G. Marinelli *gmm*  
Staff Attorney

SUBJECT: Draft AO 2001-10

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for July 12, 2001

**AGENDA ITEM**  
For Meeting of: 7-12-01

Attachment

1 **ADVISORY OPINION 2001-10**

2  
3 **The Honorable Jesse L. Jackson, Jr.**  
4 **P.O. Box 490286**  
5 **Chicago IL, 60649-9906**

6  
7 **Dear Mr. Jackson:**

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

13 **FACTS**

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

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

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

#### 10 **ACT AND COMMISSION REGULATIONS**

11           **The Commission has historically recognized that candidates have wide**  
12 **discretion in making expenditures to influence their election. However, the Act**  
13 **prohibits the conversion of campaign funds to personal use. 2 U.S.C. §439a; 11 CFR**  
14 **113.2(d); see also Advisory Opinions 2001-03, 2000-40, 2000-37, 2000-12.**  
15 **Commission regulations at 11 CFR 113.1(g) define personal use for the purposes of**  
16 **this prohibition. Generally, personal use is "any use of funds in a campaign account**  
17 **of a present or former candidate to fulfill a commitment, obligation or expense of any**  
18 **person that would exist irrespective of the candidate's campaign or duties as a Federal**  
19 **officeholder." 11 CFR 113.1(g). The rules list certain uses of campaign funds that**  
20 **will be considered *per se* personal use. 11 CFR 113.1(g)(1)(i).**

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<sup>1</sup> 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.

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

### 13   **APPLICATION TO PROPOSAL**

14           The Commission concludes that your proposal is permissible under the Act and  
15 Commission regulations. The regulations specifically permit salary payments to family  
16 members where they are payments for “*bona fide*, campaign related services.” 11 CFR  
17 113.1(g)(1)(i)(H). Regarding the terms of any contract the Committee may enter into  
18 with your wife, the Commission notes that as part of the Committee’s requirement to pay  
19 family members no more than the fair market value of *bona fide* services, the contract  
20 should contain terms customarily found in agreements entered into between paid  
21 campaign consultants and candidate committees. It should conform to the standard

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<sup>2</sup> 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.*

1 industry practice for this type of contract. Beyond this, no special obligation is imposed  
2 by the Act or Commission regulations.

3 For example, you have not stated explicitly if the contract will be in a written (or  
4 electronic) format. If it is customary that agreements between campaign committees and  
5 consultants hired to perform Ms. Jackson's fundraising and administrative support duties  
6 are in writing, then any agreement between her and the Committee should be also be in  
7 writing. Further, to satisfy the record keeping requirements of 11 CFR 104.14(b), the  
8 Committee would be required to preserve documentation relating to Ms. Jackson's  
9 employment for a period of not less than 3 years after the filing of any report to which  
10 those records may relate.<sup>3</sup> See also 11 CFR 102.9(b)(1) and Advisory Opinion 2001-03.<sup>4</sup>

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

17 The Commission expresses no opinion regarding application of any rules of the  
18 House of Representatives, or the Ethics in Government Act to the described activities,  
19 because these issues are not within its jurisdiction.<sup>5</sup> For the same reason, the

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

<sup>4</sup> 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.

<sup>5</sup> 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 as to

