

May 13, 2004

NOTICE AO DRAFT COMMENT PROCEDURES

The Commission has approved a revision in its advisory opinion procedures that permits the submission of written public comments on draft advisory opinions when proposed by the Office of General Counsel and scheduled for a future Commission agenda.

Today, DRAFT ADVISORY OPINION 2004-11 is available for public comments under this procedure. It was requested by Paul Streitz – Streitz for U.S. Senate. The draft may be obtained from the Public Disclosure Division of the Commission.

Proposed Advisory Opinion 2004-11 will be on the Commission's agenda for its public meeting of Thursday May 20, 2004.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00 noon (DST) on May 19, 2004.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case by case basis in special circumstances.

4) All comments timely received will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Disclosure Division.

CONTACTS

Press inquiries: Robert Biersack (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copy of draft AO 2004-11 contact Public Records Office-
Public Disclosure Division (202) 694-1120, or 800-424-9530.

For questions about comment submission procedure contact
Rosemary C. Smith, Associate General Counsel, (202) 694-1650.

ADDRESSES

Submit single copy of written comments to:

Commission Secretary
Federal Election Commission
999 E Street NW
Washington, DC 20463



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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SECRETARIAT

2004 MAY 13 P 2:27

May 13, 2004

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon *JAP*
Staff Director

FROM: Lawrence H. Norton *LHN (by JAC)*
General Counsel

James A. Kahl *JK*
Deputy General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Brad C. Deutsch *BCD*
Assistant General Counsel

Ron B. Katwan *RK*
Staff Attorney

Subject: Draft AO 2004-11

AGENDA ITEM
For Meeting of: 05-20-04

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 20, 2004.

Attachment

1 **ADVISORY OPINION 2004-11**

2
3 **Mr. Paul Streitz**
4 **Streitz for U.S. Senate 2004**
5 **P.O. Box 2360**
6 **Darien, CT 06820**

DRAFT

7
8 **Dear Mr. Streitz:**

9
10 **This responds to your letters, dated March 1 and March 22, 2004,**
11 **requesting an advisory opinion concerning the application of the Federal Election**
12 **Campaign Act of 1971, as amended (“the Act”), and Commission regulations to**
13 **the receipt of appearance fees by a Federal candidate for “book talks” concerning**
14 **a book he has written.**

15
16 ***Background***

17 **You are seeking the Republican nomination for U.S. Senate for**
18 **Connecticut.¹ You have written and self-published a book, *Restoring America’s***
19 ***Prosperity*, on the topics of “free trade, economics, immigration, college tuitions,**
20 **and school size.” The book does not discuss your candidacy. However, it does**
21 **discuss the political and economic views of many political figures, including**
22 **those of Senator Dodd, your potential opponent in the general election if you win**
23 **the primary. The ideas expressed in the book are the same ideas as those that**
24 **form the basis of your campaign, and your campaign materials refer to the fact**
25 **that you are the author of the book in order to lend credibility to your views on**
26 **economics and immigration issues.**

¹ You filed your Statement of Candidacy on June 5, 2003, but, according to your filings with the Commission, you have not yet reached \$5,000 in either contributions or expenditures. See 11 CFR 112.4(b).

1 According to the campaign calendar on your campaign website, you have
2 already scheduled book talks at various libraries. In addition, you anticipate that
3 other organizations might be interested in inviting you to discuss your book and
4 that the sponsors of such book talks may include business groups, economic
5 groups, companies, academic or think-tank groups, and schools. Appearance fees
6 will not be paid to your authorized committee, Streitz for U.S. Senate, but to you
7 personally, either directly or through an agent.

8 You state that your book talks will not discuss any issues other than the
9 book. You also indicate that during your book talks you will not: (a) discuss your
10 candidacy; (b) discuss your opposing candidates in the primaries or general
11 election for U.S. Senate in Connecticut; (c) pass out campaign literature; and (d)
12 request campaign contributions.

13 In your letter of March 22, you also state that your “[c]ampaign
14 appearances and book appearances will be scheduled independently and not in
15 relation to each other to create a synergy where one is impacting on the other.”
16 You are not planning to schedule any book appearances outside of Connecticut.

17

18 ***Question Presented***

19 Based on the facts and circumstances presented in this request, will the
20 appearance fees you receive for talks concerning *Restoring America's Prosperity*
21 constitute campaign contributions subject to the limitations and prohibitions of the
22 Act?

23

1 ***Legal Analysis and Conclusions***

2 The Commission concludes that, under all the facts and circumstances
3 described above, appearances fees you receive for talks concerning *Restoring*
4 *America's Prosperity* do not constitute contributions, and you may accept such
5 fees.

6 The Act defines the term "contribution" to include "any gift, loan,
7 advance, or deposit of money or anything of value made by any person for the
8 purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A)(i); 11
9 CFR 100.52(a). Contributions are subject to the dollar limits set by the Act at 2
10 U.S.C. 441a(a). The Act also prohibits contributions from certain sources, such
11 as corporations and labor organizations. 2 U.S.C. 441b, 441c, 441e, and 441f.

12 Advisory Opinion 1992-6 addressed a situation that was in many respects
13 similar to the one presented by your request. In that advisory opinion, the
14 Commission addressed the question whether a presidential candidate could accept
15 an honorarium and travel expenses for a speech at a university. In concluding that
16 the honorarium paid by the university, a corporation, to the candidate would not
17 be a contribution to his campaign, the Commission relied on the following facts:

18 (a) the honorarium and related travel expenses would be paid directly to the
19 candidate as personal income; (b) the symposium lecture would not be staged in a
20 manner that would afford the candidate an opportunity to solicit or collect
21 contributions from attendees on behalf of his presidential campaign; (c) the
22 university and the student organization hosting the talk would have control over
23 the event and who is admitted; (d) the candidate himself would not mention his

1 candidacy or that of other candidates and neither he nor his campaign staff would
2 solicit campaign contributions or campaign support; and (e) neither the candidate
3 nor his campaign staff would stage collateral campaign or publicity events.

4 Moreover, the Commission found that the candidate's appearance and the
5 university's invitation reflected his career as a recent state legislator and a speaker
6 rather than his status as a presidential candidate.

7 According to the information you have provided in your request, your
8 situation resembles that addressed in Advisory Opinion 1992-6 with respect to all
9 material facts: (a) appearance fees for your talks will be paid directly to you or
10 your agent as personal income rather than to your principal campaign committee;
11 (b) you state that you will not discuss your campaign or other candidates for
12 Federal office during the book talks;² (c) neither you nor anyone on your
13 campaign staff will solicit or collect contributions during your book talks; (d) you
14 and your campaign staff will not pass out campaign materials during the book
15 talks; and (e) you will schedule your book talks independently of any campaign
16 events, i.e., you and your campaign staff will not conduct campaign rallies, press
17 conferences, or other campaign events as part of the book talks, and pre-
18 appearance publicity for the book talks by you, your campaign, or the paying
19 entity will not reference your candidacy. Finally, just as in Advisory Opinion
20 1992-6 where the candidate's delivery of a speech at the university was

² This is particularly important given that the book talks will be scheduled only in the State in which you are running for Senate. The Commission interprets your representations regarding the book talks to include any period just before or after the prepared portion of the appearance, including any question-and-answer period.

1 undertaken as part of his career as a state legislator and public speaker, here your
2 book talks appear to be undertaken to generate interest in the books you have
3 written and published rather than to promote your candidacy for U.S. Senate.

4 In addition, this advisory opinion makes several assumptions regarding
5 your appearances. First, you will not publicize your book talks in connection with
6 your campaign, for example, on your campaign website or in other campaign
7 materials or at other campaign events. Second, your campaign staff, acting in
8 their capacity as campaign staff, will not assist you in setting up, scheduling, or
9 preparing for the book talks. However, the Commission recognizes the need to
10 coordinate the scheduling of campaign events and the candidate's non-campaign
11 activities to the extent necessary to avoid scheduling conflicts. Third, the paying
12 entity will not pay you a higher fee for the book talk than it pays to other similarly
13 situated non-candidate speakers. The Commission notes that if a similarly
14 situated non-candidate author would not have received a fee, or would have
15 received a lower fee than you, this would change the character of the appearance
16 to one that is for the purpose of influencing a Federal election and the fee would
17 constitute a contribution subject to the limitations and prohibitions of the Act.

18 To the extent your book talks take place at unincorporated educational
19 institutions, corporations, or incorporated educational institutions, they must also
20 comply with 11 CFR 110.12, 114.4(b)(1) and (c)(7) respectively.

21 The Commission expresses no opinion on issues pertaining to your receipt
22 and use of revenues from the sale of your book at your book talks, or on your
23 campaign website or through other campaign facilities because you do not inquire

1 as to these transactions. However, the Commission notes that the receipt of
2 revenues by the campaign from the sale of books by it or its agents acting on
3 behalf of the campaign (such as a candidate) is a contribution by the purchaser in
4 the full amount of the purchase and is subject to the limitations and prohibitions
5 of the Act. 11 CFR 100.53; *see, e.g.*, Advisory Opinion 1995-24.

6 The Commission expresses no opinion as to any tax ramifications in these
7 circumstances, since those issues are outside its jurisdiction.

8 This response constitutes an advisory opinion concerning the application
9 of the Act and Commission regulations to the specific transaction or activity set
10 forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if
11 there is a change in any of the facts or assumptions presented, and such facts or
12 assumptions are material to a conclusion presented in this advisory opinion, then
13 the requestor may not rely on that conclusion as support for its proposed activity.

14

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Sincerely,

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19

Bradley A. Smith
Chairman

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21 Enclosures: AOs 1992-6, 1995-24