



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 21, 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2006-7

The Hon. J.D. Hayworth
Member of Congress
J. D. Hayworth for Congress
14300 N. Northsight Blvd., Suite 105
Scottsdale, Arizona 85260

Dear Congressman Hayworth:

We are responding to your advisory opinion request on behalf of J.D. Hayworth for Congress (the "Committee"), concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to placing material promoting sales of a book you wrote entitled *Whatever It Takes* on the Committee's website. The Commission concludes that the Committee may place the promotional material on its website because the *de minimis* cost of adding this material to the Committee's website does not constitute a prohibited personal use of contributions accepted by a candidate under 2 U.S.C. 439a(b).

Background

The facts presented in this advisory opinion are based on your letter received February 9, 2006, as supplemented by an e-mail dated February 17, 2006.

The Committee is your principal campaign committee in your candidacy for reelection to the House of Representatives. You wrote a book entitled *Whatever It Takes* that was recently published by Regnery Publishing, Inc. The Committee has a website, www.jdhayworth.com, that includes a substantial amount of campaign material, including a brief biography of the candidate, discussion of various issues, endorsements, news archives, schedules of upcoming

campaign events, and similar material. The Committee proposes to offer on its campaign website information along the lines of the following:

Also, please keep an eye on this space for upcoming information on book signings (if you don't want to make a contribution, books are available at most bookstores and at Amazon.com and other online bookstores).

The Committee also proposes the following as a possible alternative:

Order your autographed copy of J.D.'s newest book *Whatever It Takes* for a donation of \$50. Or, [click here](#) to order your copy direct from Amazon.com.

You would receive royalties on any resulting book sales (other than books the Committee purchases to offer to those who contribute \$50). You also confirmed that the costs of adding the proposed material to the existing Committee website are *de minimis*.

Questions Presented

May the Committee's website inform its viewers that they may purchase a copy of Whatever It Takes "at most bookstores and at Amazon.com and other online bookstores" when the candidate would earn royalties from sales through those retailers? Alternatively, may the Committee's website include a link to Amazon.com that would enable viewers to purchase the book?

Legal Analysis and Conclusions

Yes, the Committee may do so because the *de minimis* cost of adding promotional material to the Committee's website does not constitute a prohibited personal use of campaign funds.

Under the Act and Commission regulations, a candidate and the candidate's authorized committee have wide discretion in making expenditures to influence the candidate's election. 2 U.S.C. 439a(a); 11 CFR 113.2. However, neither the candidate nor the candidate's authorized committee may convert contributions accepted by the candidate to the personal use of the candidate or any other person. 2 U.S.C. 439a(b); 11 CFR 113.1(g) and 113.2(e)(5). The Act specifies that conversion to personal use occurs when a "contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office." 2 U.S.C. 439a(b)(2). The Act and Commission regulations provide a non-exhaustive list of items that would constitute personal use *per se*. See 2 U.S.C. 439a(b)(2); 11 CFR 113.1(g)(1)(i). For items not on this list, the Commission makes a determination, on a case-by-case basis, whether an expense would fall within the definition of "personal use." 11 CFR 113.1(g)(1)(ii).

The expenses associated with marketing a book that a commercial publisher has published and for which it pays royalties to the author are expenses that exist irrespective of the candidate's election campaign or duties as a holder of Federal office. Therefore, under 2 U.S.C. 439a(b)(2) and 11 CFR 113.2(e)(5), contributions accepted by a candidate may not be used to fulfill these expenses. Thus, use of a Committee asset, like the Committee's website, to promote your book would ordinarily constitute a prohibited personal use of the contributions that paid for the asset. However, the proposed use of the Committee's website is limited to the addition of a *de minimis* amount of material to an otherwise substantial website. *Cf.* 11 CFR 113.1(g)(1)(ii)(D) (permitting *de minimis* vehicle expenses for personal activities). In light of the *de minimis* use of the Committee's asset, the Commission determines that your proposed additions to the Committee's website do not constitute a prohibited personal use of campaign funds.

The Commission expresses no opinion regarding the application of any rules of the U.S. House of Representatives or any tax ramifications of the proposed activity, because those issues are not within its jurisdiction.

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

Sincerely,

(signed)

Robert D. Lenhard
Vice Chairman