



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 23, 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2006-18

Jan Witold Baran, Esq.
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Baran:

We are responding to your advisory opinion request on behalf of Representative Kay Granger and the Kay Granger Campaign Fund (the "Committee"), concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to promoting sales of a children's book Representative Granger wrote. The Committee would like to use paid Committee personnel, the Committee's website, and the Committee's mailing list of email addresses to promote sales of the book and book-related events. Because all royalties Representative Granger earns from book sales will be donated to charitable organizations, using Committee resources for these purposes does not constitute prohibited personal use of contributions. Therefore, the Commission concludes that the Committee may promote Representative Granger's book and book-related events in the manner proposed.

Background

The facts presented in this advisory opinion are based on your letter received May 3, 2006, as supplemented by e-mails dated May 15 and June 9, 2006.

The Committee is Representative Granger's principal campaign committee in her candidacy for reelection to the House of Representatives. She wrote a children's book entitled *What's Right About America: Celebrating Our Nation's Values* that will be published in July by World Ahead Publishing, Inc.

The Committee has a website, www.kaygranger.com, that includes a substantial amount of campaign material, including a brief biography of the candidate, news articles, press releases, policy position summaries, material seeking contributions and volunteers, and similar material. The Committee proposes to add the following to its campaign website about upcoming book-related events:

On July 4, 2006, Congresswoman Kay Granger's first book will be published. 'What's Right About America: Celebrating Our Nation's Values' is a short history of the universal values that make America great. Join Kay at ____ on July ____ for a reading and book signings.

The Committee anticipates numerous book events, both within and outside Representative Granger's Congressional District. In addition to providing information about book-related events, the Committee would also like to provide information on the website about how to order a copy of the book.

The Committee also proposes to e-mail individuals on the Committee's mailing list to publicize the book and provide them with information on how to purchase a copy of the book, including a link to Amazon.com or a similar website. The e-mails would also provide information about upcoming book-related events.

In supplementing your advisory opinion request, you explained that paid Committee personnel will be involved in garnering information about the events, posting and updating website information, drafting and sending e-mails, and handling any resulting public and press inquiries. Committee staff would also like to organize and attend book-signing events, if permissible under the Act. You also explained that the costs associated with the promotional materials on the website would be more than a *de minimis* amount. Additionally, the costs associated with the use of the Committee's mailing list to send promotional materials would be more than a *de minimis* amount.

Neither Representative Granger nor the Committee would receive any royalties on any book sales. Instead, the contract between the publisher and Representative Granger specifies that all royalties from the sale of the book will be paid as designated by Representative Granger to two charitable organizations that are exempt from taxation under 26 U.S.C. 501(c)(3). Representative Granger intends to declare the royalties as income for income tax purposes to the extent required by tax law. She also intends to deduct the royalties as charitable contributions to the extent permitted by tax law, which would either entirely or partially offset the declared income.

Questions Presented

May the Committee use paid Committee staff, the Committee's website, and the Committee's mailing list of e-mail address to promote Representative Granger's book and book-related events? May Committee staff also organize and attend book-related events?

Legal Analysis and Conclusions

Yes, the Committee and Committee personnel may do so because Representative Granger has arranged to donate all royalties to charity, so the cost of promoting the book and the book-related events do not constitute a prohibited personal use of campaign funds.

Under the Act and Commission regulations, a candidate and his or her 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) (emphasis added). Here, Representative Granger's expenses as an author in marketing the book exist irrespective of her campaign.

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 Commission recently considered a similar situation in Advisory Opinion 2006-7 (Hayworth). In that Advisory Opinion, the Commission concluded that the expenses associated with marketing a book that a commercial publisher had published and for which it paid royalties to the candidate were expenses that existed irrespective of the candidate's election campaign or duties as a holder of Federal office. Therefore, use of an authorized committee asset, like the committee's website, to promote a book would have ordinarily constituted a prohibited personal use of the contributions that paid for the asset. However, in Advisory Opinion 2006-7 (Hayworth), the Commission determined that because the cost of adding this material to an otherwise substantial website was *de minimis*, the proposed website additions did not constitute a prohibited personal use of campaign funds. The Committee here anticipates that expenses related to promote the book and book-related events would be more than *de minimis*.

The Committee's proposal differs from the proposal considered in Advisory Opinion 2006-7 (Hayworth) in another respect. In Advisory Opinion 2006-7 (Hayworth), Representative Hayworth chose to receive royalties on his book. In contrast, Representative Granger's contract with her publisher requires the publisher to donate any royalties she earns to two charitable organizations. Because Representative Granger's royalties will be donated to charitable organizations, she will not personally gain from the use of Committee funds or assets for the contemplated activities. All of the examples of prohibited personal use specified in the Act involve personal benefits or obligations of a candidate, a candidate's family, or another person. See 2 U.S.C. 439a(b)(2)(A) through (I). Therefore, in light of the absence of any such

personal benefit from the proposed activities, the Commission determines that the proposed activities do not constitute a prohibited personal use of campaign funds.¹ This conclusion is consistent with the treatment of charitable donations in the Commission's regulations at 11 CFR 113.1(g)(2). That regulation provides that the donation of campaign funds to a charitable organization is not a personal use. *Cf.* 2 U.S.C. 439a(a)(3). The Committee may use its website, mailing list, and paid personnel to promote sales of Representative Granger's book and to organize, attend, and promote book-related events.

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)

Michael E. Toner
Chairman

Enclosure (Advisory Opinion 2006-7)

¹ This determination is premised on the understanding that any tax deduction that Representative Granger takes with respect to the royalties will merely offset the royalty income she declares from this book and will not result in her realizing any net economic benefit.