

KISSIN FOR CONGRESS

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2006 DEC - 1 A 10-21
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November 27, 2006

Lawrence Norton, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: FEC ID # C00421842

AOR 2006-37

Dear Mr. Norton:

As a former candidate for the United States Congress, I am respectfully requesting an Advisory Opinion so as to be found eligible to receive a refund of part of the amount of money I advanced to the Kissin for Congress campaign committee. I am inquiring as to whether or not under the Federal Election Campaign Act and Commission regulations, the Treasurer may report a refund to me in the amount of \$15,230.34 in the Kissin for Congress Committee's termination report.

I paid out directly a total of \$1,759.80 for campaign materials and advertisements, without expecting reimbursement. I also made available to the campaign committee from my personal funds deposits into the campaign checking account in the total amount of \$25,400.00. The two deposits I made in March of 2006 in the total amount of \$25,000.00 were made with the expectation that I would be reimbursed to the extent funds were left after payment of all expenses. Receipts from all other sources were in the total amount of \$7,290.39. The final figure on expenditures is \$19,219.85. The campaign paid out no wages or salaries - all work, including my own, was volunteer. I received 41% of the vote in Maryland's Democratic Primary on September 12, 2006. This was my first political campaign of any kind.

On September 21, 2006, while discussing an unrelated inquiry with a Senior Analyst at the FEC, I was shocked to learn that failing to report my advances to the campaign as loans could disqualify me for a refund. The Senior Analyst referred me to AO 1997-21, issued on October 2, 1997. Since then, I have been referred to AO 1997-21A, also issued on October 2, 1997, as well as the AO issued on April 20, 1998, pursuant to a request for reconsideration of the original AO 1997-21. Upon said reconsideration, the Commission stated in pertinent part:

“[W]hen determining the nature of a transaction between a candidate and the candidate's committee, the Commission has taken into account not only the way in which the transaction was reported, but also affidavits evidencing the intent of the parties involved in the transactions. Of relevance to your situation is the Statement of Reasons in the Commission's final repayment determination for the 1992 Buchanan for President campaign. See Statement of Reasons – Final Repayment determination of Buchanan for President, Inc. (August 1, 1995). In circumstances similar to yours, Mr. Buchanan advanced \$50,000 in a series of transfers to his campaign committee. These transfers were reported on the committee's reports as contributions. However, during the audit process, the candidate and the campaign chair produced affidavits that affirmed that the reporting had been in error, and the original intention of the candidate and the committee was that the transfers were loans with repayment to be made if the campaign should have the funds available. The Commission accepted the affidavits as manifesting the true nature of the transaction. See Id.

“Similarly here, with the affidavits of both the candidate and committee treasurer explaining that the reported November 20, 1996 transactions were intended as advances, but were mistakenly reported as simply an in-kind contribution, the Commission accepts the status of the transactions as advances.”

I am attaching to this request three Affidavits, one by the Campaign Treasurer, one by the Campaign Manager, and one by myself, that describe under oath my intentions and the intentions of the campaign committee, with respect to the transactions at issue.

Respectfully submitted,


Barry I. C. Kissin

AFFIDAVIT OF CANDIDATE


STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this ^{27th} ~~31st~~ day of ^{November} ~~October~~, 2006, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Barry J.C. Kissin, and made oath in due form of law as follows:

1. On September 12, 2006, I was defeated in the Democratic Primary Election for the seat in the United States Congress for the Sixth Congressional District of Maryland. I was a first-time candidate for Federal office. I had never been a candidate for any other political office.


2. On March 3, 2006, when I deposited \$5,000.00 from my personal funds into the campaign checking account, and on March 21, 2006, when I deposited \$20,000.00 into the campaign checking account, my intention was that the campaign committee would repay me to the extent funds were available after payment of all expenses.

3. Until September 21, 2006, when I was referred to AO 1997-21 by a Senior Analyst at the FEC, I did not understand that the aforesaid deposits should have been reported as loans.



Barry J.C. Kissin

AFFIRMED AND SUBSCRIBED TO BEFORE ME this ^{27th} ~~31st~~ day of ^{November} ~~October~~, 2006.



Notary Public

My Commission Expires: 12-01-06

AFFIDAVIT OF COMMITTEE TREASURER

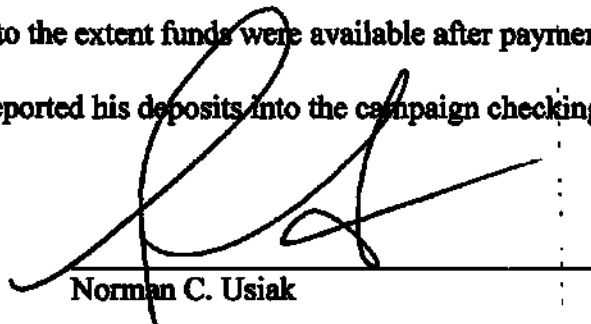
STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 27th day of November, 2006, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Norman C. Usiak, and made oath in due form of law as follows:

1. I served as Committee Treasurer throughout Barry Kissin's campaign for election to the United States Congress. I had never served as a Campaign Committee Treasurer before. In fact, I had never before had anything to do with managing campaign funds.

2. I distinctly recall that on March 21, 2006, when Mr. Kissin made a deposit into the campaign checking account in the amount of \$20,000.00, that he expressed to me his intention that the campaign committee would repay him to the extent funds were available after payment of all expenses.

3. I also distinctly recall that on September 21, 2006, Mr. Kissin expressed to me his disturbance over being told by an employee of the FEC that if his intention were that the campaign committee would repay him to the extent funds were available after payment of all expenses, the committee should have reported his deposits into the campaign checking account as loans.



Norman C. Usiak

AFFIRMED AND SUBSCRIBED TO BEFORE ME this 27 day of November, 2006.



Notary Public

My Commission Expires: 12-01-06

AFFIDAVIT OF CAMPAIGN MANAGER

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 27th day of November, 2006, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared William Lafferman, and made oath in due form of law as follows:

1. I served as Campaign Manager throughout Barry Kissin's campaign for election to the United States Congress. I had never served as a Campaign Manager before. I had never been a member of a Campaign Committee before.

2. I distinctly recall that in March of 2006, when Mr. Kissin made deposits into the campaign checking account in the total amount of \$25,000.00, he did this with the expectation that the campaign committee would repay him to the extent funds were available after payment of all expenses. I do not recall Mr. Kissin's precise words to this effect. But I do recall our discussions in which Mr. Kissin expressed his determination to ask potential supporters for their votes and their time rather than their money, to rely on volunteer rather than paid help, generally to be efficient in our expenditures, to finance the campaign largely out of his own limited personal funds, and then to reimburse himself out of what was left in the campaign's bank account.

3. Accordingly, it was my clear understanding that Mr. Kissin would be reimbursed with whatever monies were left in the campaign checking account after payment of all expenses. The Campaign Committee had this same understanding.


William Lafferman

AFFIRMED AND SUBSCRIBED TO BEFORE ME this 27th day of November, 2006.

Della Stanek
Notary Public

My Commission Expires: 12-01-06