



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 1, 2007

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-07

Neil P. Reiff, Esq.  
Sandler, Reiff & Young, P.C.  
50 E Street, SE  
Suite 300  
Washington, DC 20003

Dear Mr. Reiff:

We are responding to your advisory opinion request on behalf of Craig for U.S. Congress (“the Committee”), regarding whether, under the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations, the Committee may amend its disclosure reports to report funds received from the candidate as loans rather than as contributions, and accept additional contributions to pay off these loans. The Commission concludes that the Committee may amend its reports and accept contributions to pay off the loans.

***Background***

The facts presented in this advisory opinion are based on your letter and accompanying affidavit received on April 4, 2007, and additional statements received on April 13, 2007.

James W. Craig was a candidate in the 2006 Democratic primary election for the House of Representatives seat from New Hampshire’s First Congressional District. The Committee was Mr. Craig’s principal campaign committee.

Mr. Craig provided personal funds to the Committee to retire campaign debt on two occasions: \$17,000 on September 29, 2006, and \$20,000 on October 24, 2006. The Committee reported these funds as contributions from the candidate. However, you have submitted an affidavit from the candidate, and a statement from the Committee’s

bookkeeper, indicating that the candidate intended the funds to be treated as loans to the Committee. You have also submitted a statement from the Committee's outside compliance consultant, who was charged with preparing and filing the Committee's disclosure reports, indicating that he was unaware of the candidate's intent that the funds be treated as loans.

### ***Question Presented***

*May the Committee amend its disclosure reports to report the funds received from the candidate as loans rather than contributions, and then accept contributions to pay off these loans?*

### ***Legal Analysis and Conclusions***

Yes, the Committee may amend its disclosure reports to report the funds received from the candidate as loans rather than contributions, and then accept contributions to pay off these loans.

The Act provides six categories of permissible uses of contributions. *See* 2 U.S.C. 439a(a). Such uses are permitted provided that they do not result in campaign funds being converted to personal use by any person. 2 U.S.C. 439a(b)(1). "Personal use" occurs when a "contribution . . . 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). Campaign funds may be used to repay a loan from a candidate, the proceeds of which were used in connection with his or her campaign, because such debt repayment is an authorized expenditure in connection with that candidate's campaign for Federal office. *See* 2 U.S.C. 439a(a)(1) and Advisory Opinion 2003-30 (Fitzgerald). If the candidate loan is in excess of \$250,000, the amount in excess may not be repaid with proceeds from contributions received after the date of the election in which the candidate was running. *See* 2 U.S.C. 441a(j) and 11 CFR 116.12(a).

The Act further requires that the reports filed by a candidate's principal campaign committee disclose, among other transactions, all loans made by or guaranteed by the candidate, as well as contributions from the candidate. 2 U.S.C. 434(b)(2)(B), (G) and 434(b)(8); *see also* 11 CFR 104.3(a)(4)(iv) and 104.3(d). Debts and obligations owed by or to a political committee that remain outstanding shall be continuously reported until extinguished. 11 CFR 104.11(a).

When determining the nature of a transaction between a candidate and the candidate's authorized 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. For example, in Advisory Opinion 2006-37 (Kissin), the candidate had made two deposits of personal funds into his principal campaign committee's account. These deposits were reported as contributions from the candidate. After the candidate lost the primary election and all debts had been extinguished, the

committee sought to reimburse the remaining funds to the candidate. Affidavits submitted by the candidate, his campaign chairman, and his principal campaign committee's treasurer supported a determination that the deposits were in fact loans from the candidate that were mistakenly reported as contributions. Accordingly, the Commission determined that the committee's remaining cash-on-hand, which was less than the amount loaned, could be paid to the candidate as partial repayment for his loans to the committee. *See also* Advisory Opinion 1997-21 (Firebaugh) (affidavits submitted by candidate and her principal campaign committee's treasurer stating that transactions with the candidate should have been reported as advances rather than in-kind contributions were sufficient to conclude that the transactions had been improperly reported, and that it was appropriate to amend the reports and refund the remaining cash-on-hand to the candidate); *Statement of Reasons-Final Repayment Determination of Buchanan for President, Inc.* (Aug. 1, 1995) (affidavits submitted by a presidential primary candidate and the chairman of his principal campaign committee stating that receipts of candidate funds should have been reported as loans rather than contributions were sufficient to demonstrate the true nature of the transactions and allow repayment to the candidate).

Here, the affidavit of the candidate, Mr. Craig, and the statement of his principal campaign committee's bookkeeper, support a determination that the candidate and the Committee intended the personal funds the candidate provided to the Committee to be loans. Further, the statement of the Committee's outside compliance consultant presents no contrary information. Based on these documents, the Commission concludes that the personal funds provided by Mr. Craig were loans from him to the Committee that were mistakenly reported as contributions.

Because these funds were initially misreported, the Committee must amend its October 2006 Quarterly Report and all subsequent reports to reflect the debts owed by the Committee to the candidate. Furthermore, to the extent the loans by the candidate to the Committee remain unpaid, the Committee must either continue to report the obligations or report the candidate's forgiveness of those obligations, as appropriate. The amended reports should be filed within 30 days of the receipt of this advisory opinion. *See* Advisory Opinion 1997-21 (Firebaugh).

Further, because the Committee has outstanding debts to the candidate of less than \$250,000, it may accept contributions made after the date of the election in order to retire the full amount of these debts. *See* 2 U.S.C. 441a(j); 11 CFR 110.1(b)(3)(iii) and 116.12(a). Contributions may be raised only in amounts sufficient to retire any remaining debt. *See* 11 CFR 110.1(b)(3)(iii)(B). Contributions made by individuals must be aggregated with any contributions they have previously made for the 2006 primary election to ensure that they do not exceed the contribution limits for that election. *See* 11 CFR 110.1(b)(1). The contribution limits applicable to any funds raised to retire debt are those that were in effect for the 2006 election cycle. *See* 11 CFR 110.1(b)(3)(iii)(C).<sup>1</sup>

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<sup>1</sup> For example, individuals may contribute up to \$2,100.

The Commission expresses no opinion regarding the application of Federal tax law to the proposed activities because that question is not within the Commission's 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 requester may not rely on that conclusion as support for its proposed activity. All cited advisory opinions are available on the Commission's website at [www.fec.gov](http://www.fec.gov).

Sincerely,

(signed)

Robert D. Lenhard  
Chairman