

May 22, 2007

AO DRAFT COMMENT PROCEDURES

The Commission permits the submission of written public comments on draft advisory opinions when on the agenda for a Commission meeting.

DRAFT ADVISORY OPINION 2007-07 is available for public comments under this procedure. It was requested by, Craig for U.S. Congress

Draft Advisory Opinion 2007-07 is scheduled to be on the Commission's agenda for its public meeting of Thursday, May 31, 2007.

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 (Eastern Time) on May 30, 2007.

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 timely received comments 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 Records Office.

CONTACTS

Press inquiries: Robert Biersack (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2007-07, contact the Public Records Office at (202) 694-1120 or (800) 424-9530.

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

MAILING ADDRESSES

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

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SECRETARIAT

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AGENDA ITEM

For Meeting of: 05-31-07

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *TPD*
General Counsel

Rosemary C. Smith *AK for RCS*
Associate General Counsel

Ron B. Katwan *RBK*
Assistant General Counsel

Anthony T. Buckley *ATB*
Attorney

Subject: Draft AO 2007-07

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 31, 2007.

Attachment

1 ADVISORY OPINION 2007-07

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3 Neil P. Reiff, Esq.
4 Sandler, Reiff & Young, P.C.
5 50 E Street, SE
6 Suite 300
7 Washington, DC 20003

DRAFT

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9 Dear Mr. Reiff:

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We are responding to your advisory opinion request on behalf of Craig for U.S.

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Congress (“the Committee”), regarding whether, under the Federal Election Campaign

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Act of 1971, as amended (the “Act”), and Commission regulations, the Committee may

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amend its disclosure reports to report funds received from the candidate as loans rather

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than as contributions, and accept additional contributions to pay off these loans. The

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Commission concludes that the Committee may amend its reports and accept

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contributions to pay off the loans.

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Background

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The facts presented in this advisory opinion are based on your letter and

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accompanying affidavit received on April 4, 2007, and additional statements received on

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April 13, 2007.

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James W. Craig was a candidate in the 2006 Democratic primary election for the

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House of Representatives seat from New Hampshire’s First Congressional District. The

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Committee was Mr. Craig’s principal campaign committee.

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Mr. Craig provided personal funds to the Committee to retire campaign debt on

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two occasions: \$17,000 on September 29, 2006, and \$20,000 on October 24, 2006. The

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Committee reported these funds as contributions from the candidate. However, you have

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submitted an affidavit from the candidate, and a statement from the Committee’s

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

6 ***Question Presented***

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

10 ***Legal Analysis and Conclusions***

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

14 The Act provides six categories of permissible uses of contributions. *See*
15 2 U.S.C. 439a(a). Such uses are permitted provided that they do not result in campaign
16 funds being converted to personal use by any person. 2 U.S.C. 439a(b)(1). "Personal
17 use" occurs when a "contribution . . . is used to fulfill any commitment, obligation, or
18 expense of a person that would exist irrespective of the candidate's election campaign or
19 individual's duties as a holder of Federal office." 2 U.S.C. 439a(b)(2). Campaign funds
20 may be used to repay a loan from a candidate, the proceeds of which were used in
21 connection with his or her campaign, because such debt repayment is an authorized
22 expenditure in connection with that candidate's campaign for Federal office. *See*
23 2 U.S.C. 439a(a)(1) and Advisory Opinion 2003-30 (Fitzgerald). If the candidate loan is

1 in excess of \$250,000, the amount in excess may not be repaid with proceeds from
2 contributions received after the date of the election in which the candidate was running.
3 *See* 2 U.S.C. 441a(j) and 11 CFR 116.12(a).

4 The Act further requires that the reports filed by a candidate's principal campaign
5 committee disclose, among other transactions, all loans made by or guaranteed by the
6 candidate, as well as contributions from the candidate. 2 U.S.C. 434(b)(2)(B), (G) and
7 434(b)(8); *see also* 11 CFR 104.3(a)(4)(iv) and 104.3(d). Debts and obligations owed by
8 or to a political committee that remain outstanding shall be continuously reported until
9 extinguished. 11 CFR 104.11(a).

10 When determining the nature of a transaction between a candidate and the
11 candidate's authorized committee, the Commission has taken into account not only the
12 way in which the transaction was reported, but also affidavits evidencing the intent of the
13 parties involved in the transactions. For example, in Advisory Opinion 2006-37 (Kissin),
14 the candidate had made two deposits of personal funds into his principal campaign
15 committee's account. These deposits were reported as contributions from the candidate.
16 After the candidate lost the primary election and all debts had been extinguished, the
17 committee sought to reimburse the remaining funds to the candidate. Affidavits
18 submitted by the candidate, his campaign chairman, and his principal campaign
19 committee's treasurer supported a determination that the deposits were in fact loans from
20 the candidate that were mistakenly reported as contributions. Accordingly, the
21 Commission determined that the committee's remaining cash-on-hand, which was less
22 than the amount loaned, could be paid to the candidate as partial repayment for his loans
23 to the committee. *See also* Advisory Opinion 1997-21 (Firebaugh) (affidavits submitted

1 by candidate and her principal campaign committee's treasurer stating that transactions
2 with the candidate should have been reported as advances rather than in-kind
3 contributions were sufficient to conclude that the transactions had been improperly
4 reported, and that it was appropriate to amend the reports and refund the remaining cash-
5 on-hand to the candidate); *Statement of Reasons-Final Repayment Determination of*
6 *Buchanan for President, Inc.* (Aug. 1, 1995) (affidavits submitted by a presidential
7 primary candidate and the chairman of his principal campaign committee stating that
8 receipts of candidate funds should have been reported as loans rather than contributions
9 were sufficient to demonstrate the true nature of the transactions and allow repayment to
10 the candidate).

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

18 Because these funds were initially misreported, the Committee must amend its
19 October 2006 Quarterly Report and all subsequent reports to reflect the debts owed by the
20 Committee to the candidate. Furthermore, to the extent the loans by the candidate to the
21 Committee remain unpaid, the Committee must either continue to report the obligations
22 or report the candidate's forgiveness of those obligations, as appropriate. The amended

1 reports should be filed within 30 days of the receipt of this advisory opinion. *See*
2 Advisory Opinion 1997-21 (Firebaugh).

3 Further, because the Committee has outstanding debts to the candidate of less
4 than \$250,000, it may accept contributions made after the date of the election in order to
5 retire the full amount of these debts. *See* 2 U.S.C. 441a(j); 11 CFR 110.1(b)(3)(iii) and
6 116.12(a). Contributions may be raised only in amounts sufficient to retire any
7 remaining debt. *See* 11 CFR 110.1(b)(3)(iii)(B). Contributions made by individuals
8 must be aggregated with any contributions they have previously made for the 2006
9 primary election to ensure that they do not exceed the contribution limits for that election.
10 *See* 11 CFR 110.1(b)(1). The contribution limits applicable to any funds raised to retire
11 debt are those that were in effect for the 2006 election cycle. *See* 11 CFR
12 110.1(b)(3)(iii)(C).¹

13 The Commission expresses no opinion regarding the application of Federal tax
14 law to the proposed activities because that question is not within the Commission's
15 jurisdiction.

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

¹ For example, individuals may contribute up to \$2,100.

1 conclusion as support for its proposed activity. All cited advisory opinions are available
2 on the Commission's website at www.fec.gov.

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Sincerely,

Robert D. Lenhard
Chairman