



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 12, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-18

Phu Huynh, Esq.
Oldaker, Biden & Belair, LLP
818 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20006

Dear Mr. Huynh:

We are responding to your advisory opinion request on behalf of Rangel for Congress (the "Committee") and the National Leadership PAC, concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the use of Committee funds or, alternatively, National Leadership PAC funds, to pay for the commissioning of an official portrait of Representative Charles Rangel. The portrait would be donated to the U.S. House of Representatives.

The Commission concludes that the Committee may use its funds to pay for the portrait of Representative Rangel because the U.S. House of Representatives is an organization described in section 170(c) of Title 26 and because payment for the portrait would not financially benefit Representative Rangel or any member of his family. The Commission also concludes that the National Leadership PAC may use its funds to pay for the portrait of Representative Rangel because the payment would not be an in-kind contribution for the purpose of influencing any election.

Background

The facts presented in this advisory opinion are based on your letter received on August 21, 2007, and a telephone call of September 27, 2007.

The Committee is the principal campaign committee of Representative Charles Rangel of New York. Representative Rangel is Chairman of the U.S. House of Representatives Committee on Ways and Means. The National Leadership PAC is Representative Rangel's "leadership PAC" and is a nonconnected multicandidate committee.

The U.S. House of Representatives traditionally honors committee chairs by placing their portraits in the committee hearing rooms. The House Committee on Ways & Means will commission the portrait for donation to the U.S. House of Representatives. The Committee or the National Leadership PAC will pay the entire cost of the portrait, estimated to be \$64,500, and neither the Committee nor the National Leadership PAC will solicit or receive funds to pay for the portrait. This cost reflects a three-quarter body length size, important details, and a custom frame, and the requestor represents that this amount is commensurate with the usual and normal charge for similar works by artists of similar renown. The artist receiving the commission is not a member of Representative Rangel's family. The portrait will become the official property of the House in perpetuity (*i.e.*, the portrait will not be transferred or sold to any other person or organization) and will be donated to the House exclusively for public purposes.

Question Presented

May the Committee or, alternatively, the National Leadership PAC, use its funds to pay for a portrait of Representative Rangel that will be donated to the U.S. House of Representatives?

Legal Analysis and Conclusions

Yes, both the Committee and the National Leadership PAC may use their funds to pay for a portrait of Representative Rangel that will be donated to the U.S. House of Representatives.

The Act provides that campaign funds may be donated to any organization described in 26 U.S.C. 170(c), but may not be "converted by any person to personal use." 2 U.S.C. 439a(a)(3) and (b)(1); *see also* 11 CFR 113.1(g)(2) and 113.2(b). Commission regulations provide that donations from campaign funds to section 170(c) organizations are not personal use, unless the candidate receives compensation from the organization before that organization has expended, for purposes unrelated to the candidate's personal benefit, the entire amount donated. 11 CFR 113.1(g)(2).

Previous advisory opinions have considered the application of the Act and Commission regulations to other factual situations somewhat similar to the circumstances presented here. For example, in Advisory Opinion 1995-18 (Leach), the Chairman of the House Committee on Banking and Financial Services proposed to commission a portrait of the former Chairman of what was then the House Committee on Banking, Finance and Urban Affairs as a permissible donation of campaign funds to the U.S. House of

Representatives. The Commission determined that the proposed donation was permissible under the Act and Commission regulations.

In determining whether a proposed use of a candidate's campaign funds is permissible, the Commission considers two factors. First, the Commission considers whether the recipient organization qualifies as an entity described in 26 U.S.C. 170(c). *See, e.g.*, Advisory Opinions 2005-6 (McInnis) (not-for-profit organization seeking qualification under 26 U.S.C. 501(c)(3)) and 1995-18 (Leach) (U.S. House of Representatives). In Advisory Opinion 1995-18 (Leach), the Commission found that the U.S. House of Representatives qualifies as a "an instrumentality of the United States, which is . . . an 'organization described in section 170(c) of title 26,' to the extent that the donation is made for exclusively public purposes." Here, similar to the facts in Advisory Opinion 1995-18 (Leach), the portrait of Representative Rangel will be donated to the U.S. House of Representatives exclusively for public purposes and will become the property of the House in perpetuity.

Second, the Commission considers whether the proposed payment for a portrait of Representative Rangel that would be donated to the U.S. House of Representatives would financially benefit Representative Rangel or a member of his family. *See* 11 CFR 113.1(g)(2); *see also* Advisory Opinion 2005-6 (McInnis). While Representative Rangel is employed by the U.S. House of Representatives and receives compensation from the House for his services, no part of the payment for the portrait by the Committee or by the National Leadership PAC would benefit either Representative Rangel or his family financially. *See* Advisory Opinion 1983-27 (McDaniel) (an authorized committee may donate excess campaign funds to an educational foundation partly because no donated funds would accrue to the candidate's benefit), *cited in* Explanation and Justification for Final Rules on Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7869 (Feb. 9, 1995). Under these circumstances, the Commission concludes that the Committee's use of campaign funds to pay for the cost of the portrait is permissible.

Similarly, the National Leadership PAC may pay for the portrait commission. This would not be an in-kind contribution to Rangel for Congress because such a payment would be exclusively to create a portrait to be donated to a section 170(c) organization and thus would not be for the purpose of influencing an election for Federal office. *See* 2 U.S.C. 431(8)(A)(i); 11 CFR 100.52(a).

Both the Committee and the National Leadership PAC are required to report all disbursements of funds, including any payment for a portrait, and to maintain appropriate documentation of disbursements. *See* 2 U.S.C. 434(b)(4) and (b)(5); 11 CFR 104.3(b). A payment for a portrait would be reportable as "other disbursements." 2 U.S.C. 434(b)(4)(G) and 434(b)(4)(H)(v); 11 CFR 104.3(b)(1)(ix) and 104.3(b)(2)(vi).

The Commission expresses no opinion regarding any tax ramifications of the proposed activity and no opinion regarding application of the rules of the House of Representatives to the proposed activity because those questions are 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 requestor may not rely on that conclusion as support for its proposed activity. All cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

Sincerely,

(signed)
Robert D. Lenhard
Chairman