

November 20, 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 2007-22 is available for public comments under this procedure. It was requested by Jim Hurysz.

Draft Advisory Opinion 2007-22 is scheduled to be on the Commission's agenda for its public meeting of Thursday, November 29, 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 12:00pm noon (Eastern Time) on November 28, 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 2007-22, contact the Public Records Office at (202) 694-1120 or (800) 424-9530 or visit the Commission's website at www.fec.gov.

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

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November 20, 2007

AGENDA ITEM

For Meeting of: 11-29-07

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
General Counsel

Rosemary C. Smith *ACS*
Associate General Counsel

Amy L. Rothstein *AR*
Assistant General Counsel

Stacey J. Shin *SJS*
Attorney

Subject: Draft AO 2007-22

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for November 29, 2007.

Attachment

1 **ADVISORY OPINION 2007-22**

2

3 **Mr. Jim Hurysz**

DRAFT

4 **P.O. Box 5191**

5 **Preston King Station**

6 **Arlington, VA 22205**

7

8 **Dear Mr. Hurysz:**

9 **We are responding to your advisory opinion request concerning the application of**
10 **the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission**
11 **regulations to the participation of Canadian citizens in your Federal election campaign.**

12 **The Commission concludes that Canadian citizens may provide volunteer services**
13 **to your campaign. Furthermore, you may use campaign funds and personal funds to**
14 **obtain information from Canadian citizens, and to travel to Canada to observe third party**
15 **election operations. You may also use campaign funds to hire Canadian citizens as**
16 **members of your campaign staff. Your authorized committee may not accept election**
17 **materials used in previous Canadian campaigns that are provided without charge by**
18 **Canadian third party candidates, but you may use campaign funds and personal funds to**
19 **purchase such materials.**

20 ***Background***

21 **The facts presented in this advisory opinion are based on your letters received on**
22 **August 13, and September 20, 2007, supplemented by your e-mails received on**
23 **September 27, September 28, and October 3, 2007.**

1 You were an independent candidate for the Eighth Congressional District of
2 Virginia in the 2004 and 2006 elections. Currently, you are contemplating another run
3 for the same seat in the 2008 election.¹

4 You indicate that it is extremely difficult to locate individuals who have
5 participated in a successful third party, non-incumbent campaign for the U.S. House of
6 Representatives. In Canada, however, you note that third party candidates are often
7 elected, and thus, you would like to consult with Canadian citizens who have managed
8 successful campaigns. Furthermore, you would like to use campaign funds or personal
9 funds to purchase information from Canadians about Canada's multi-party system and
10 how third party and independent candidates win elections in Canada. Such information
11 would consist of "widely circulated campaign information and information from
12 meetings and events," similar to material presented and distributed at political events in
13 the United States, such as the annual "Take Back America Conference" held by the
14 Campaign for America's Future. Additionally, you would like to use campaign funds or
15 personal funds to travel to Canada to obtain such information and observe third party
16 election operations.

17 You also would like to hire Canadian citizens as members of your campaign staff.
18 You state that such individuals would not hold "positions involving fund-raising and
19 other campaign finance activities." In addition, your campaign would like to accept
20 volunteer services provided by Canadian citizens. Such volunteers would not hold
21 supervisory or management positions, but would conduct a variety of campaign-related

¹ Commission records indicate that your principal campaign committee is Jim Hurysz for Congress Campaign Committee. As of the date of issuance of this advisory opinion, you have not yet filed a statement of candidacy with the Commission.

1 activities, such as “lit drops, door to door canvassing, handing out literature at transit
2 stations, telephone banking, and get out the vote” activities.

3 Finally, you would like to accept certain election-related items provided without
4 charge by Canadian third party candidates who used the items in their previous
5 campaigns. The items include flyers, advertisements, door hangers, tri-folds, signs, and
6 other printed material.

7 ***Questions Presented***

- 8 1. *May your authorized committee accept volunteer services from Canadian citizens?*
9
10 2. *May your authorized committee use campaign funds to obtain certain information*
11 *from Canadians, to pay for travel to Canada to obtain such information and observe*
12 *third party election operations, and to pay the salaries of Canadian campaign staff?*
13
14 3. *May you use personal funds to obtain certain information from Canadians, and to*
15 *travel to Canada to obtain such information and observe third party election*
16 *operations?*
17
18 4. *May your authorized committee accept election materials used in previous Canadian*
19 *campaigns that are provided without charge by Canadian third party candidates?*
20

21 ***Legal Analysis and Conclusions***

22 *Question 1. May your authorized committee accept volunteer services from*
23
24 *Canadian citizens?*

25 Yes, your authorized committee may accept certain volunteer services to your
26 campaign as described below.

27 The Act and Commission regulations prohibit foreign nationals, directly or
28 indirectly, from making a “contribution or a donation of money or other thing of value
29 . . . in connection with a Federal, State, or local election.” 2 U.S.C. 441e(a)(1)(A);

1 *see also* 11 CFR 110.20(b). However, the Act and Commission regulations also provide
2 that the term “contribution” does not include “the value of services provided without
3 compensation by any individual who volunteers on behalf of a candidate or political
4 committee.” 2 U.S.C. 431(8)(B)(i); *see also* 11 CFR 100.74.

5 You would like to use the volunteer services of Canadian citizens for a variety of
6 campaign activities, such as “lit drops, door to door canvassing, handing out literature at
7 transit stations, telephone banking, and get out the vote” activities. The Commission
8 concludes that the performance of such campaign-related activities by Canadian citizens,
9 without compensation, constitutes volunteer activity and, as such, is exempt from the
10 definition of “contribution.” Thus, the value of volunteer services provided to your
11 campaign by Canadian nationals would not constitute a prohibited in-kind contribution to
12 your campaign.² *See* Advisory Opinions 2004-26 (Weller) (performance of campaign-
13 related activities by a foreign national without compensation, including soliciting funds
14 and support for a Federal candidate, would not result in the making or receipt of a
15 prohibited contribution), and 1987-25 (Otaola) (uncompensated volunteer services
16 provided by a foreign national student would not constitute a prohibited contribution).

17 *Question 2. May your authorized committee use campaign funds to obtain*
18 *certain information from Canadians, to pay for travel to Canada to obtain such*
19 *information and observe third party election operations, and to pay the salaries of*
20 *Canadian campaign staff?*

² The Commission notes that the foreign nationals would be prohibited from expending more than \$1,000 of their personal funds for travel in connection with their volunteer activities for the campaign. *See* 2 U.S.C. 431(8)(A)(iv); 11 CFR 100.79(a). However, any unreimbursed payment from a volunteer’s personal funds for usual and normal subsistence expenses incidental to volunteer activity is not a contribution. *See* 11 CFR 100.79(b).

1 **Yes, your authorized committee may use campaign funds to obtain certain**
2 **information from Canadians, to pay for travel to Canada to obtain such information and**
3 **observe third party election operations, and to pay the salaries of Canadian citizens**
4 **working for your campaign.**

5 **The Act identifies six categories of permissible uses of contributions accepted by**
6 **a Federal candidate, including otherwise authorized expenditures in connection with the**
7 **candidate's campaign for Federal office. *See* 2 U.S.C. 439a(a)(1); *see also***
8 **11 CFR 113.2. Contributions accepted by a candidate may not, however, be converted to**
9 **"personal use" by any person. *See* 2 U.S.C 439a(b)(1); 11 CFR 113.2. Commission**
10 **regulations define "personal use" as "any use of funds in a campaign account of a present**
11 **or former candidate to fulfill a commitment, obligation or expense of any person that**
12 **would exist irrespective of the candidate's campaign or duties as a Federal officeholder."**
13 **11 CFR 113.1(g); *see also* 2 U.S.C 439a(b)(2).**

14 **You ask about using campaign funds to obtain information from Canadians about**
15 **Canada's multi-party system and how third party and independent candidates win**
16 **elections in Canada. Such use of campaign funds would be an otherwise authorized**
17 **expenditure in connection with your campaign for Federal office, and is therefore a**
18 **permissible use of campaign funds under the Act and Commission regulations. *See***
19 **2 U.S.C. 439a(a)(1); 11 CFR 113.2. The use of campaign funds to purchase this**
20 **information would not constitute a conversion to personal use, because the expense**
21 **would not exist irrespective of your campaign. *See* 11 CFR 113.1(g); *see also***
22 **2 U.S.C 439a(b)(2). Thus, you may use campaign funds to pay for this information.**

1 You also ask about using campaign funds to travel to Canada to consult with
2 Canadian citizens who have managed successful third party campaigns, and to observe
3 third party campaign operations. Commission regulations specifically provide a non-
4 exhaustive list of uses, including “travel expenses,” that are subject to a case-by-case
5 examination to determine whether they constitute “personal use.” *See* 11 CFR
6 113.1(g)(1)(ii)(C); *see, e.g.*, Advisory Opinion 2005-09 (Dodd) (permitting the use of
7 campaign funds to defray the costs of travel by a Federal officeholder’s minor children to
8 accompany their parents, provided that the parents are traveling to participate in a
9 function directly connected to the Senator’s *bona fide* official responsibilities). The
10 Commission concludes that the use of campaign funds to travel to Canada and consult
11 with Canadian citizens who have managed successful third party campaigns would be an
12 otherwise authorized expenditure in connection with your campaign for Federal office,
13 and would therefore be a permissible use of campaign funds under the Act and
14 Commission regulations. *See* 2 U.S.C. 439a(a)(1); 11 CFR 113.2. The use of campaign
15 funds in this manner would not constitute a conversion to personal use because the
16 expense would not exist irrespective of your campaign for Federal office. *See*
17 11 CFR 113.1(g); *see also* 2 U.S.C 439a(b)(2). Therefore, you may use campaign funds
18 for this travel to Canada.

19 You also ask about using campaign funds to hire Canadian citizens to work as
20 campaign staff. The Commission concludes that such use of campaign funds is an
21 otherwise authorized expenditure in connection with your campaign for Federal office,
22 and is therefore a permissible use of campaign funds under the Act and Commission
23 regulations. *See* 2 U.S.C. 439a(a)(1); 11 CFR 113.2. The use of campaign funds to pay

1 for campaign staff who are Canadian citizens also would not constitute a conversion to
2 personal use because this expense would not exist irrespective of your campaign. *See*
3 11 CFR 113.1(g); *see also* 2 U.S.C 439a(b)(2). Therefore, you may pay for such staff
4 salaries using campaign funds.

5 *Question 3. May you use personal funds to obtain certain information from*
6 *Canadians, and to travel to Canada to obtain such information and observe third party*
7 *candidate operations?*

8 Yes, you may use personal funds to obtain from Canadians information identified
9 in the response to Question 2, and to travel to Canada to obtain such information and
10 observe third party candidate operations. Such use of personal funds would constitute an
11 in-kind contribution to your campaign. *See* 11 CFR 100.52(d)(1) and 100.111(e)(1).

12 Individual contributions to a candidate's authorized committee are limited to
13 \$2,300 per election. *See* 2 U.S.C. 441a(a)(1)(A). However, Commission regulations
14 provide that "candidates for Federal office [other than presidential candidates receiving
15 public funding] may make unlimited expenditures from personal funds."³
16 11 CFR 110.10; *see, e.g.*, Advisory Opinion 2000-08 (Harvey). Thus, you may expend
17 your personal funds, without limitation, to obtain information from Canadian third party
18 candidates, and travel to Canada to obtain such information and observe third party
19 candidate operations.⁴

³ "Personal funds" of a candidate means the sum of "assets," "income," and "jointly owned assets" as defined in 11 CFR 100.33.

⁴ Disbursements of such personal funds must be reported by your principal campaign committee as in-kind contributions to and expenditures made by your principal campaign committee on Schedules A and B, if the in-kind contributions aggregate in excess of \$200 in a calendar year. *See* 2 U.S.C. 434(b); *see also* 11 CFR 104.3(a)(4)(i), 104.3(b)(4)(i), 104.13(a)(1), and 104.13(a)(2).

1 ***Question 4. May your authorized committee accept election materials used in***
2 ***previous Canadian campaigns that are provided without charge by Canadian third party***
3 ***candidates?***

4 **No, your authorized committee may not accept election materials used in previous**
5 **Canadian campaigns that are provided without charge by Canadian third party candidates.**
6 **Your authorized committee may, however, expend campaign funds to purchase the**
7 **materials. You may also use personal funds to purchase such materials.**

8 **As noted above, the Act and Commission regulations prohibit foreign nationals,**
9 **directly or indirectly, from making a “contribution or donation of money or other thing of**
10 **value, or to make an express or implied promise to make a contribution or donation, in**
11 **connection with a Federal State, or local election.” 2 U.S.C. 441e(a)(1)(A); *see also***
12 **11 CFR 110.20(b). “Anything of value” includes all in-kind contributions, including the**
13 **provision of goods or services without charge or at a charge that is less than the usual and**
14 **normal charge. *See* 11 CFR 100.52(d)(1). “Usual and normal charge” is defined as the**
15 **price of goods in the market from which they ordinarily would have been purchased at**
16 **the time of the contribution, or the commercially reasonable rate prevailing at the time**
17 **the services were rendered. *See* 11 CFR 100.52(d)(2).**

18 **Here, you propose accepting without charge, from Canadian third party and**
19 **independent candidates, certain printed materials used in previous Canadian campaigns.**
20 **The materials would include flyers, advertisements, door hangers, tri-folds, signs, and**
21 **other printed material. You plan to use these items to assist you in your own campaign.**
22 **Although the value of these materials may be nominal or difficult to ascertain, they have**
23 **some value. The provision of these items without charge would relieve your campaign of**

1 the expense that it would otherwise incur to obtain such materials. Thus, the provision of
2 such items without charge would constitute a contribution and, as such, would be
3 prohibited, particularly in light of the broad scope of the prohibition on contributions
4 from foreign nationals. *See, e.g.*, 120 Cong. Rec. 8782 (Mar. 28, 1974) (statement of
5 Sen. Bentsen, author of the amendment prohibiting foreign national contributions) (“I am
6 saying that contributions by foreign nationals are wrong, and they have no place in the
7 American political system.”); *see also Explanation and Justification for Regulations on*
8 *Contribution Limitations and Prohibitions*, 67 Fed. Reg. 69940 (Nov. 19, 2002) (“As
9 indicated by the title of section 303 of BCRA, “Strengthening Foreign Money Ban,”
10 Congress amended 2 U.S.C. 441e to further delineate and expand the ban on
11 contributions, donations, and other things of value by foreign nationals.”).

12 The situation presented here is similar to that considered by the Commission in
13 Advisory Opinion 1981-51 (Metzenbaum). In that opinion, the Commission concluded
14 that the provision of an original work of art by a foreign national artist to a political
15 committee for use by the committee in fundraising was a contribution and, hence,
16 prohibited by 2 U.S.C. 441e. Similarly here, you plan to use the printed materials from
17 previous Canadian campaigns to assist you in your own campaign. As such, their
18 provision without charge by foreign nationals would constitute a prohibited in-kind
19 contribution to your campaign. Nor may you solicit, accept, or receive such goods from
20 foreign nationals. *See* 2 U.S.C. 441e(a)(2); 11 CFR 110.20(g) and (h). Your committee
21 may, however, expend campaign funds to purchase such materials because such use of
22 campaign funds would be an otherwise authorized expenditure in connection with your
23 campaign for Federal office and would not constitute a conversion to personal use. *See*

1 2 U.S.C. 439a(a)(1); 11 CFR 113.2. You may also use personal funds to purchase such
2 materials. *See* 11 CFR 110.10.

3 This response constitutes an advisory opinion concerning the application of the
4 Act and Commission regulations to the specific transaction or activity set forth in your
5 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
6 of the facts or assumptions presented and such facts or assumptions are material to a
7 conclusion presented in this advisory opinion, then the requester may not rely on that
8 conclusion as support for its proposed activity. All cited advisory opinions are available
9 on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

10

11

Sincerely,

12

13

Robert D. Lenhard
Chairman

14