

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 2007-29 is available for public comments under this procedure. It was requested by Representative Jesse L. Jackson, Jr.

Draft Advisory Opinion 2007-29 is scheduled to be on the Commission's agenda for its public meeting of Thursday, December 6, 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 December 5, 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 2007-29, 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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Washington, DC 20463

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2007 DEC -4 P 1:45

AGENDA ITEM

For Meeting of: 12-06-07

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
General Counsel

Rosemary C. Smith *PCS*
Associate General Counsel

Amy L. Rothstein *ARR*
Assistant General Counsel

Richard Ewell *RE*
Attorney

Subject: Draft AO 2007-29

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for December 6, 2007.

Attachment

1 ADVISORY OPINION 2007-29

2 The Honorable Jesse L. Jackson, Jr.
3 PO Box 490286
4 Chicago, IL 60649-9906

DRAFT

5 Dear Representative Jackson:

6 We are responding to your advisory opinion request concerning the application of
7 the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission
8 regulations to your proposed donation of funds from your principal campaign committee
9 to the campaign committee of your wife, Ms. Sandi Jackson, who is seeking election to
10 the political party position of Committeeman of the 7th Ward in the Cook County
11 Democratic Party.

12 The Commission concludes that Representative Jackson may donate an unlimited
13 amount of funds from his principal campaign committee to Ms. Jackson's campaign
14 committee.

15 ***Background***

16 The facts presented in this advisory opinion are based on your letter received on
17 October 22, 2007 and on other publicly available sources.¹

18 You represent the 2nd District of Illinois in the United States House of
19 Representatives and are a candidate for re-election in 2008. The Jesse L. Jackson, Jr. for
20 Congress Committee is your principal campaign committee.

21 Ms. Jackson currently serves as an Alderman on the Chicago City Council,
22 representing the 7th Ward in an area that overlaps with the 2nd congressional district. She
23 is seeking election to the position of Committeeman of the 7th Ward in the Cook County

¹ See www.cityofchicago.org, www.elections.il.gov/ElectionInformation/CandNameList.aspx, and the October 2007 Quarterly Report of the Jesse L. Jackson, Jr. for Congress Committee (shows \$827,869.05 cash on hand).

1 Democratic Party. As a Committeeman of the 7th Ward, she would represent the same
2 geographic area in the Cook County Democratic Party. In her capacity as a Democratic
3 Party Committeeman, you state that "she would be expected to promote the activity and
4 advance the interests of the local political party."

5 ***Questions Presented***

6 *1. May you donate funds from your principal Federal campaign committee to the*
7 *campaign committee for Ms. Jackson's election to the position of Committeeman of the*
8 *7th Ward in the Cook County Democratic Party?*

9 *2. If so, do the Act or Commission regulations limit the amount of such funds that your*
10 *principal campaign committee may donate to Ms. Jackson's campaign committee for*
11 *Committeeman?*

12 ***Legal Analysis and Conclusions***

13 *Question 1. May you donate funds from your principal Federal campaign committee to*
14 *the campaign committee for Ms. Jackson's election to the position of Committeeman of*
15 *the 7th Ward in the Cook County Democratic Party?*

16 Yes, you may donate funds consisting of contributions accepted by your principal
17 Federal campaign committee to Ms. Jackson's campaign committee for her election to
18 Committeeman of the 7th Ward in the Cook County Democratic Party.

19 The Act and Commission regulations identify six permissible uses of

1 contributions accepted by a Federal candidate.² See 2 U.S.C. 439a(a) and 11 CFR

2 113.2(e). Two of these permissible uses are relevant here.

3 One permitted use of campaign contributions accepted by a principal campaign

4 committee is for donations to "State and local candidates subject to the provisions of

5 State law."³ See 2 U.S.C. 439a(a)(5); 11 CFR 113.2(d). The Commission has generally

6 used the terms "State and local candidates" interchangeably with "candidate for state or

7 local office" to describe candidates for election to an office of a State or local

8 government.⁴ The Commission therefore concludes that the term "State and local

9 candidates," as used in 2 U.S.C. 439a(a)(5) and 11 CFR 113.2(d), does not include those

10 seeking office in a political party organization, such as the office sought by Ms. Jackson.

11 Thus, donations to Ms. Jackson's campaign committee would not qualify as a permissible

12 use under the "State and local candidates" provision of 2 U.S.C. 439a(a)(5) and 11 CFR

13 113.2(d).

² These uses are: (1) for authorized expenditures in connection with the individual's campaign for Federal office; (2) for ordinary and necessary expenses incurred in connection with the recipient's duties as a holder of Federal office; (3) for donations to organizations described in section 170(c) of Title 26 of the U.S. Code [charitable organizations]; (4) for transfers to any national, State, or local committee of a political party; (5) for donations to "State and local candidates"; and (6) for "any other lawful purpose" that would not result in a conversion of the funds to personal use. See 2 U.S.C. 439a(a)(1) through (6); 11 CFR 113.2(a) through (e).

³ You represent that no contribution limits apply to Ms. Jackson's election. The Commission expresses no opinion regarding the application of the laws of Illinois or Chicago.

⁴ See, e.g., 11 CFR 300.70 (defines scope of subpart E, which is titled "State and Local Candidates," as applying to "any candidate for State or local office"); see also 11 CFR 100.24 (Federal election activity), 100.29 (electioneering communication), 100.87 (volunteer activity for party committees), 100.88 (volunteer activity for candidates), 100.148 (volunteer activity for candidate), 106.4 (allocation of polling expenses), 109.21(g) (coordinated communication safe harbor for endorsements of candidates for "non-Federal" office), 300.11(a)(3)(iii) (prohibitions on fundraising for and donating to certain tax-exempt organizations), 300.32(b)(1)(ii) and (c)(2) (Levin funds), 300.37(a)(3)(iv) (prohibitions on fundraising for, and donating to, certain tax-exempt organizations), 300.50(a)(3)(iii) (prohibited fundraising by national party committees), 300.51(a)(3)(iii) and (iv) (prohibited fundraising by State, district, or local party committees), and 300.72 (Federal funds not required for certain communications).

1 However, the Commission concludes that the proposed donation to Ms. Jackson's
2 campaign committee would be permissible because the Act and Commission regulations
3 permit a Federal candidate or officeholder to use campaign contributions "for any other
4 lawful purpose" other than the conversion of such funds to the "personal use" of the
5 candidate, officeholder, or any other person. *See* 2 U.S.C. 439a(a)(6); 11 CFR 113.2(e).
6 Commission regulations define "personal use" as "any use of funds in a campaign
7 account of a present or former candidate to fulfill a commitment, obligation or expense of
8 any person that would exist irrespective of the candidate's campaign or duties as a
9 Federal officeholder."⁵ 11 CFR 113.1(g); *see also* 2 U.S.C. 439a(b)(2). Commission
10 regulations list a number of purposes that would constitute personal use *per se*, but the
11 list does not include donations of funds to candidates for a local office of a political party.
12 11 CFR 113.1(g)(1)(i). The question thus becomes whether the proposed use of funds
13 would nonetheless constitute personal use under 2 U.S.C. 439a and 11 CFR 113.1(g).
14 *See* 11 CFR 113.1(g)(1)(ii). The Commission concludes that it would not.

15 When the Commission applies the "personal use test" on a case-by-case basis, it
16 does so in light of "its long-standing opinion that candidates have wide discretion over
17 the use of campaign funds." Explanation and Justification, Expenditures; Reports by
18 Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7867 (February 9,
19 1995) (Personal Use E&J). As discussed above, the Act and Commission regulations

⁵ The Commission explained this test as follows:

If campaign funds are used for a financial obligation that is caused by campaign activity or the activities of an officeholder, that use is not personal use. However, if the obligation would exist even in the absence of the candidacy or even if the officeholder were not in office, then the use of funds for that obligation generally would be personal use.

Personal Use E&J, 60 Fed. Reg. at 7863-4.

1 permit transfers to political party committees and donations to State and local candidates.
2 The use of funds that you propose is analogous. Therefore, the proposed donations of
3 campaign funds to Ms. Jackson's campaign are permissible pursuant to 2 U.S.C.
4 439a(a)(6) and 11 CFR 113.2(e), as long as the funds transferred to Ms. Jackson's
5 campaign committee are used only for the committee's bona fide campaign purposes and
6 are not otherwise converted to personal use.⁶

7 *Question 2. If so, do the Act or Commission regulations limit the amount of such funds*
8 *that your principal campaign committee may donate to Ms. Jackson's campaign*
9 *committee for Committeeman?*

10 No, neither the Act nor Commission regulations limit the amount of funds that
11 your principal campaign committee may donate to Ms. Jackson's campaign committee
12 for her Committeeman election.

13 Federal candidates and officeholders may not solicit, receive, direct, transfer,
14 spend, or disburse funds in connection with any election other than an election for
15 Federal office unless the funds do not exceed the amounts permitted with respect to
16 contributions to candidates and political committees under 2 U.S.C. 441a(a)(1), (2), and

⁶ The Commission's advisory opinions provide further support for the permissibility of your proposed transfer of campaign contributions. In Advisory Opinion 1993-10 (Colorado), the Commission permitted a former Federal candidate to transfer his excess Federal campaign funds to two separate election efforts: his campaign for President of the Popular Democratic Party, and his campaign for Governor of Puerto Rico. In permitting the transfer of funds to the campaign for the political party office, the Commission relied on the "any other lawful purpose" provision in 2 U.S.C. 439a and compared the candidacy for party office to a candidacy for State or local office, noting that "while no opinion has dealt with the use of excess campaign funds in campaigns to seek office in a political party organization, these prior opinions [on transfers to candidates for State or local office] would suggest that such use is not unlawful or personal use under section 439a." *Id.* Moreover, prior to the recent inclusion of transfers to State and local candidates in the enumerated list of permissible uses of campaign funds in 2 U.S.C. 439a(a), the Commission also relied on the "any other lawful purpose" provision in determining that donations of campaign funds to State and local candidates did not constitute personal use and were therefore permissible. *See, e.g.,* Advisory Opinions 2000-32 (Martinez) (donation of funds to a State candidate) and 1996-52 (Andrews) (refund to, and re-solicitation of, Federal campaign contributors on behalf of campaign for State office treated as transfer of funds by Federal candidate to his campaign for State office).

1 (3), and do not come from sources prohibited under the Act from making a contribution
2 in connection with a Federal election. *See* 2 U.S.C. 441i(e)(1)(B); 11 CFR 300.62. With
3 respect to non-Federal elections, Commission regulations also require that such funds be
4 in amounts and from sources that are consistent with State law. *See* 11 CFR 300.62.

5 Because you propose to donate funds from your principal campaign committee,
6 the Commission assumes that the funds comply with the amount and source limits of the
7 Act and Commission regulations. Accordingly, the amount of funds you may donate
8 from your principal campaign committee to Ms. Jackson's campaign committee is not
9 restricted by 2 U.S.C. 441i(e)(1)(B) or 11 CFR 300.62, provided such donations are
10 consistent with applicable State law.

11 The Commission expresses no opinion regarding whether the activities you
12 propose are permissible under the laws of Illinois or Chicago.

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

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Sincerely,

Robert D. Lenhard
Chairman