

**Heather W. Grote**

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Thursday, October 23, 2008

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COMMISSION  
OFFICE OF GENERAL  
COUNSEL

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**ORIGINAL**

Ms. Thomasena Duncan, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

*AOR 2008-17*

Re: Advisory Opinion Request

Dear Ms. Duncan:

On behalf of Missourians for Kit Bond (“the campaign”) and KITPAC (“the PAC”), a leadership PAC associated with U.S. Senator Kit Bond, I write to seek an advisory opinion from the Federal Election Commission concerning use of leadership PAC or campaign funds to support the publication of a non-fiction book regarding the terrorist threat in the Far East. As you know, the campaign is the federal principal campaign committee of U.S. Senator Kit Bond. The PAC is a leadership PAC associated with Senator Bond. Both entities are properly registered with the Federal Election Commission.

#### INTRODUCTION

For three years, Senator Bond has worked with a Pulitzer Prize-winning journalist who, as Senator Bond’s coauthor, joined him in writing a book tentatively titled “The Next Front: What America Can Do to Win Over Asia’s Muslims.”

In 2005, Senator Bond and his coauthor signed a contract with a major publishing company to publish this work. Upon execution of the publishing agreement, an advance of \$60,000 was paid, with \$16,667 paid to Senator Bond and \$43,333 paid to his coauthor. Of the \$16,667 paid to Senator Bond, approximately \$15,000 was paid to the publishing agent who secured the original contract, and the remainder was paid to Senator Bond’s coauthor for drafting the original proposal. No additional advances or royalties have been paid to Senator Bond or his coauthor to date – indeed, Senator Bond has personally spent more than \$1,000 on incidental expenses related to the project and has not retained *any* funds from the advance.

As is common in the industry, the publishing agreement contained a clause stating that in the event of nonpublication, the publishing company would be repaid its advance only if Senator Bond and his coauthor later secured publication of their work elsewhere. In such an instance, the publishing company would be due any and all proceeds made under a later agreement with another publishing company, up to the full \$60,000 paid in advances.

After reconsidering the nature of the book, the publishing company declined to finalize publication. However, because Senator Bond believes the topic of the book is so important, he and his coauthor sought and secured a second publishing company willing to publish the work.

When the second publishing company pays its advance to Senator Bond and his coauthor, such monies will be due to the first publishing company under the clause described above. As a result of this obligation to the first publishing company, no advance funds will remain to fully compensate Senator Bond's coauthor for his expenses, time, and efforts in preparing the manuscript for the second publishing company's approval. Taking into account the advance the coauthor already received from the first publishing company and the expected royalties from the second publishing company, the fair market value of such services would be \$25,000.

Because the issues presented in the book are so important, and because we believe the book would be an effective gift to potential donors, we wish to utilize either campaign or leadership PAC funds to compensate Senator Bond's coauthor \$25,000. Such payment would be made at or shortly after the time the book is accepted by the second publishing company, and would ensure that the coauthor is able to complete his work to finalize publication.

Any additional royalties or proceeds due under the second publishing agreement, beyond the \$60,000 due to the first publishing company, would be paid exclusively to Senator Bond's coauthor. Under no circumstances will Senator Bond will receive *any* profits whatsoever.

Once the book is published, both the leadership PAC and the campaign plan to purchase copies of the book at fair market value for distribution to current and potential donors and supporters. As aforementioned, Senator Bond will receive no profits whatsoever from such purchases.

While Senator Bond plans to consult with the Senate Select Committee on Ethics regarding the applicability of Senate Rules to the new publishing agreement, the campaign and the leadership PAC seek confirmation that a payment from either one or both of these entities to Senator Bond's coauthor would be permissible under the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations.

## **LEGAL BACKGROUND**

The Commission has addressed the issue of a candidate's book proceeds and expenses in the past. For instance, in Advisory Opinion ("AO") 1995-46, it concluded that Senator Alfonse D'Amato's campaign committee could purchase books written by Senator D'Amato for distribution to campaign supporters and donors. Because Senator D'Amato himself would not receive proceeds from the proposed transactions, improper "personal use" would not result. *See* AO 1995-46. Likewise, the Commission has explained that if Senator Arlen Specter's campaign committee were to publish copies of Senator Specter's book, but the copies purchased by the campaign would not result in royalties or income paid to Senator Specter, the purchase of book copies would not constitute improper "personal use." *See* AO 2001-08.

More recently, the Commission considered a closely-analogous matter wherein Representative Kay Granger sought permission to use her campaign's personnel, website, mailing list, and funds to promote sales of her book and book-related events. As the Commission recognized, expenses related to the promotion of the book would be far more than simply *de minimis*. However, because all of Representative Granger's royalties were donated to charitable organizations, her campaign was permitted to expend funds to promote the book. *See* AO 2006-18.

Commission regulations define “personal use” as “any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.” 11 CFR § 113.1(g). *See also* 2 USC § 439a(b)(2). To the extent we decide to pay Senator Bond’s coauthor from campaign funds, any payments would meet this standard.

Just as in AO 2006-18, Senator Bond will not personally receive any royalties from the second publishing company, and any funds he has received thus far have been used to pay various expenses related to the book, including coauthor and publishing agent expenses. He seeks to publish the book purely to advance the ideas and philosophies important to his campaign and leadership PAC, and not to benefit himself personally. In addition, all payments made to his coauthor will equal the fair market value of the coauthor’s work.<sup>1</sup> We believe these facts would permit us to make payment from *either* Senator Bond’s campaign account or the leadership PAC account, but seek confirmation of this analysis.

### **QUESTIONS PRESENTED**

(1) Would the Act and Commission regulations permit the campaign to compensate Senator Bond’s coauthor \$25,000 for his work on the manuscript, given that any proceeds from the second publishing agreement would (a) be used to compensate the first publishing company; and (b) once the first publishing company is fully made whole, paid to the coauthor? As aforementioned, both the leadership PAC and the campaign plan to purchase copies of the book for distribution to current and potential donors and supporters.

(2) Would the Act and Commission regulations permit the leadership PAC to compensate Senator Bond’s coauthor \$25,000 for his work on the manuscript, given that any proceeds from the second publishing agreement would (a) be used to compensate the first publishing company; and (b) once the first publishing company is fully made whole, paid to the coauthor? As aforementioned, both the leadership PAC and the campaign plan to purchase copies of the book for distribution to current and potential donors and supporters.

### **CONCLUSION**

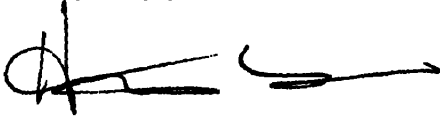
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<sup>1</sup> As aforementioned, the coauthor has already been paid \$43,333 by the first publishing company. Assuming he is paid \$25,000 by one of the two committees, the sum total of upfront payments he will receive for approximately three years of steady work (October 2005 to the present) is only \$68,333. As such, he will be paid any and all additional royalties arising from the second publishing agreement. Our review of similar coauthor and ghostwriter payments indicates that the sum total of these three sets of payments will be well within fair-market value of the coauthor’s work.

# *Heather W. Grote*

The campaign and the leadership PAC respectfully request issuance of an advisory opinion confirming that the Act and FEC regulations do not restrict either entity from taking the actions described herein.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Heather Grote', with a stylized flourish at the end.

Heather Grote

Treasurer to Missourians for Kit Bond and KITPAC