

PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS

Members of the public may submit written comments on draft advisory opinions.

DRAFTS A AND B OF ADVISORY OPINION 2011-02 are now available for comment. The advisory opinion was requested by Daniel B. Winslow, Esq., on behalf of Senator Scott Brown and Scott Brown for U.S. Senate Committee, Inc., and the drafts are scheduled to be considered by the Commission at its public meeting on Thursday, February 17, 2011.

If you wish to comment on DRAFT A OR DRAFT B OF ADVISORY OPINION 2011-02, please note the following requirements:

- 1) Comments must be in writing, and they must be both legible and complete.
- 2) Comments must be submitted to the Office of the Commission Secretary by hand delivery or fax ((202) 208-3333), with a duplicate copy submitted to the Office of General Counsel by hand delivery or fax ((202) 219-3923).
- 3) Comments must be received by 3 p.m. (Eastern Time) on February 16, 2011.
- 4) The Commission will generally not accept comments received after the deadline. 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.
- 5) All timely received comments will be made available to the public at the Commission's Public Records Office and will be posted on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

REQUESTOR APPEARANCES BEFORE THE COMMISSION

The Commission has implemented a pilot program to allow advisory opinion requestors, or their counsel, to appear before the Commission to answer questions at the open meeting at which the Commission considers the draft advisory opinion. This program took effect on July 7, 2009.

Under the program:

- 1) A requestor has an automatic right to appear before the Commission if any public draft of the advisory opinion is made available to the requestor or requestor's counsel less than one week before the public meeting at which the advisory opinion request will be considered. Under these circumstances, no advance written notice of intent to appear is required. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2).**
- 2) A requestor must provide written notice of intent to appear before the Commission if all public drafts of the advisory opinion are made available to requestor or requestor's counsel at least one week before the public meeting at which the Commission will consider the advisory opinion request. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2). The notice of intent to appear must be received by the Office of the Commission Secretary by hand delivery, email (Secretary@fec.gov), or fax ((202) 208-3333), no later than 48 hours before the scheduled public meeting. Requestors are responsible for ensuring that the Office of the Commission Secretary receives timely notice.**
- 3) Requestors or their counsel unable to appear physically at a public meeting may participate by telephone, subject to the Commission's technical capabilities.**
- 4) Requestors or their counsel who appear before the Commission may do so only for the limited purpose of addressing questions raised by the Commission at the public meeting. Their appearance does not guarantee that any questions will be asked.**

FOR FURTHER INFORMATION

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Other inquiries:

To obtain copies of documents related to Advisory Opinion 2011-02, contact the Public Records Office at (202) 694-1120 or (800) 424-9530, or visit the Commission's website at <http://saos.nictusa.com/saos/searchao>.

ADDRESSES

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Office of General Counsel
ATTN: Rosemary C. Smith, Esq.
Federal Election Commission
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Washington, DC 20463

AGENDA DOCUMENT NO. 11-09



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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February 15, 2011

AGENDA ITEM

MEMORANDUM

TO: The Commission

FROM: Christopher Hughey *pch*
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Subject: AO 2011-02 (Brown) – Drafts A and B

For Meeting of 2-17-11

SUBMITTED LATE

Attached are two alternative proposed drafts of the subject advisory opinion. We have been asked to place these drafts on the Open Meeting agenda for February 17, 2011. We note that one or more additional drafts of this advisory opinion may be forthcoming.

Attachment

1 ADVISORY OPINION 2011-02
2 Daniel B. Winslow, Esq.
3 Proskauer Rose LLP
4 One International Place
5 Boston, MA 02110
6
7

DRAFT A

8 Dear Mr. Winslow:

9 We are responding to your advisory opinion request on behalf of Senator Scott
10 Brown and the Scott Brown for U.S. Senate Committee (the "Committee") concerning
11 the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), to
12 several proposed activities relating to the upcoming publication and promotion of Senator
13 Brown's autobiography (the "book").

14 The Commission concludes that Senator Brown and the Committee may engage
15 in each of the proposed activities. Senator Brown may donate to charity the royalties
16 from bulk sales of the book to the Committee, and need not forego those royalties. The
17 Committee may post a *de minimis* amount of material promoting the book on its website
18 and, pursuant to its request, social media sites. Furthermore, Senator Brown's proposal
19 to personally reimburse the Committee for the fair market value of the rental of its lists is
20 permissible. Senator Brown may host fundraising events in cities that the book's
21 publisher pays for him to travel to promote the book. Finally, the Committee may collect
22 email addresses of people who attend the Senator's book signing and promotional events.

23 ***Background***

24 The facts presented in this advisory opinion are based on your letter received on
25 January 14, 2011, as supplemented by your emails received on January 24, January 28,
26 and February 4, 2011.

1 The Committee is Senator Brown's principal campaign committee for his re-
2 election to the United States Senate.¹ Senator Brown's autobiography, *Against All Odds*,
3 will be published by Harper Collins (the "Publisher"), on or about February 20, 2011.
4 Following the publication of the book, Senator Brown will promote the book in a national
5 book tour during the Senate's February recess (the week of February 20, 2011).

6 Senator Brown's agreement with the Publisher was reviewed by the Senate Select
7 Committee on Ethics, which determined that the agreement adheres to the traditional
8 standards and practices in the publishing industry. The agreement provides for the
9 Publisher's payment of advances as well as royalties to Senator Brown. The royalties
10 will be determined as a percentage of net sales revenue.

11 The Committee proposes to purchase several thousand copies of the book, though
12 not more than the number needed, for campaign-related activities. The Committee plans
13 to use the book to influence Senator Brown's election, such as by distributing books as
14 "thank you" gifts to campaign contributors and political supporters. The Committee will
15 purchase these books at either (a) a bulk rate that is a standard fair market price that the
16 Publisher, under normal industry practice, makes available on equal terms to other large
17 purchasers that are not political organizations or committees, or (b) at the usual retail
18 price of the book, if the bulk rate is unavailable. Senator Brown proposes to donate the
19 royalties from the Committee's bulk purchase of the book to a charitable organization
20 described in section 501(c)(3) of the Internal Revenue Code or under chapter 12, section
21 8, of the Massachusetts General Laws governing charitable organizations. Alternatively,

¹ The Committee filed its first Statement of Organization with the Commission on September 17, 2009. On January 26, 2010, Senator Brown filed with the Commission a Statement of Candidacy for the 2012 Senate election.

1 the Publisher can refrain from crediting to Senator Brown royalties for sales of the book
2 to the Committee. Under either scenario, the Publisher would remove the royalties from
3 those sales from Senator Brown's royalty calculation.

4 The Committee proposes to promote Senator Brown's book by posting a *de*
5 *minimis* amount of information on its website about the book and the book tour. The
6 Committee's website, www.scottbrown.com, includes dozens of pages grouped by tabs
7 that divide website content into categories, such as News, Events, Issues, and Contribute.
8 The Committee updates its website daily. The Committee would like to post information
9 on its website home page, and this information will consume no more than 25 percent of
10 the home page, with a link to another page with more information, including how to
11 purchase the book and where to meet Senator Brown on the book tour. The Committee
12 expects that the cost of these postings will be *de minimis*. The Committee's website also
13 includes links to the Committee's social media sites on Facebook and Twitter.

14 The Committee proposes to post similar information on Senator Brown's
15 Facebook fan page, Twitter feed, and LinkedIn site.

16 • Facebook. Senator Brown's Facebook page has over 237,000 fans and features
17 over 2,500 links, seven tabs, and thousands of Wall² entries. The Committee
18 proposes to post book promotional information on Senator Brown's Facebook
19 Wall or "Info" page. These posts would consume no more than 25 percent of the
20 Facebook page on which they are posted.

² A Facebook "Wall" is "a place to post and share content with your friends." Facebook Help Center: Using Facebook, <http://www.facebook.com/help/?faq=13153> (last visited Feb. 2, 2011). The Committee characterizes Senator Brown's Facebook Wall as "essentially a bulletin board where fans and friends can post notes."

- 1 • Twitter. Senator Brown's Twitter handle,³ @ScottBrownMA, has over 27,000
2 followers and features over 950 tweets⁴ to date. Senator Brown would like to
3 tweet about his activities on the book promotional tour. For example, a tweet
4 might state: "I'm at the bookstore in LA, come see me and say hello" and include
5 a link to the website page with information about the book. The tweets about the
6 book would comprise less than 10 percent of the Committee's Twitter page.
- 7 • LinkedIn. Senator Brown's LinkedIn page similarly contains information about
8 him and links to his website. Senator Brown has a LinkedIn network of over 500
9 people. The Committee's proposed posts on Senator Brown's LinkedIn page
10 would link to the Committee's website page containing information about the
11 book, would be small compared to other content, and be no more than 25 percent
12 of a page.

13 Like the postings to the Committee's website, all of these social media postings will be
14 made at *de minimis* cost to the Committee.

15 The Committee also proposes to promote the book to individuals on the
16 Committee's email and mailing lists. The Committee's email and mailing address
17 database includes contact information for thousands of persons who have contributed to
18 the Committee.

19 The Publisher will pay the travel and other costs of the book tour and promotional
20 appearances. Travel will be on commercial carriers at ordinary commercial rates.

³ A user's "Twitter handle" is "the username [the user has] selected and the accompanying URL." Twitter Help Center: The Twitter Glossary, <http://support.twitter.com/articles/166337-the-twitter-glossary> (last visited Feb. 2, 2011).

⁴ A "tweet" is a "message posted via Twitter containing 140 characters or fewer." *Id.* As a verb, to "tweet" is to post a message on Twitter. *Id.*

1 Although the principal reason for Senator Brown's travel is to promote the book,
2 Senator Brown, while on the book tour, also wishes to host fundraising events for the
3 Committee in the cities to which he will travel. Senator Brown's attendance at these
4 fundraisers would be ancillary to his presence in those areas to promote his book. The
5 Committee assumes that Senator Brown's participation in fundraising would add no
6 additional travel costs to those to be paid by the Publisher.

7 Finally, the Committee proposes to have a campaign staffer collect email
8 addresses from people who attend Senator Brown's book signing events on the book tour.
9 The Committee does not propose to rely on the Publisher in collecting this data. The
10 Committee plans to use the email addresses that it collects to apprise people of
11 Committee news and activities and for future solicitations of contributions.

12 ***Questions Presented***

- 13
- 14 1. *May Senator Brown donate to charity the royalties from bulk sales of the book to*
15 *the Committee, or must he forego those royalties?*
 - 16
 - 17 2. *May the Committee post material promoting the book on its website and social*
18 *media sites?*
 - 19
 - 20 3. *If Senator Brown personally reimburses the Committee for the fair market value*
21 *of its email and mailing lists, based on an independent list appraisal, may the lists*
22 *be used to promote the sale of his book?*⁵
 - 23
 - 24 4. *May Senator Brown host fundraising events in cities where the book Publisher*
25 *pays his travel costs to promote the book?*
 - 26
 - 27 5. *May the Committee collect email addresses of people who attend the Senator's*
28 *book signing and promotional events, for the purpose of soliciting contributions*
29 *in the future?*

⁵ The advisory opinion request included two alternative questions, if the Commission does not give an affirmative response to Question 3. The Commission is not addressing these alternative questions because it concludes that the Committee may engage in the activity discussed in Question 3.

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Legal Analysis and Conclusions

Question 1. May Senator Brown donate to charity the royalties from bulk sales of the book to the Committee, or must he forego those royalties?

Yes, Senator Brown may donate to charity the royalties from bulk sales of the book to the Committee; he need not forego those royalties.

Under the Act and Commission regulations, a candidate and his authorized committee have wide discretion in making expenditures to influence the candidate's election. 2 U.S.C. 439a(a); 11 CFR 113.2. There are six categories of permissible uses of contributions received by a Federal candidate, including for otherwise authorized expenditures in connection with the candidate's campaign for Federal office and for any other lawful purpose. 2 U.S.C. 439a(a); 11 CFR 113.1(g) and 113.2(a). Such uses must not, however, result in the conversion of campaign funds to the personal use of the candidate or any other person. 2 U.S.C. 439a(b); 11 CFR 113.1(g) and 113.2(e)(5).

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 U.S.C. 439a(b)(2). The Act and Commission regulations provide a non-exhaustive list of uses of campaign funds that are *per se* personal use. 2 U.S.C. 439a(b)(2); 11 CFR 113.1(g)(1)(i). For uses of campaign funds not on this list, the Commission determines, on a case-by-case basis, whether a use of campaign funds would fall within the definition of "personal use."
11 CFR 113.1(g)(1)(ii).

1 In several prior advisory opinions, the Commission has considered whether the
2 purchase by an authorized committee of its candidate's book is personal use. *See, e.g.,*
3 Advisory Opinions 2004-18 (Lieberman), 2001-08 (Specter), 1995-46 (D'Amato), and
4 1993-20 (Nighthorse Campbell). The facts presented in this request are particularly
5 similar to those presented in Advisory Opinion 2001-08 (Specter). In that advisory
6 opinion, the Commission determined that the use of the authorized committee's campaign
7 funds to purchase its candidate's book would defray an expense that would not exist
8 irrespective of the campaign and would not be an impermissible personal use. The
9 Commission's conclusion was based on several facts: the authorized committee's funds
10 would be used to purchase the book solely for distribution to the committee's
11 contributors and supporters, and thus would be used by the committee only for the
12 purpose of influencing its candidate's election to Federal office; the quantity purchased
13 would not exceed the number needed for this described purpose; all royalties attributable
14 to the committee's purchase would be paid by the publisher to charity; and the
15 committee's purchase would be removed by the publisher from the royalty calculation.⁶

16 Similarly, here, the Committee's funds would be used to purchase the book solely
17 for distribution as gifts to the Committee's financial contributors and political supporters,

⁶ Advisory Opinion 2001-08 (Specter) also addressed whether the Committee's bulk purchase of the book at a discounted rate would result in an in-kind contribution by the publisher. *See* 2 U.S.C. 441b(a); 11 CFR 114.2(b). The Commission concluded that no in-kind contribution would result, because the discounted items were made available in the ordinary course of business and on the same terms and conditions to the vendor's other customers that were not political committees. Advisory Opinion 2001-08 (Specter); *see also* Advisory Opinion 2004-18 (Lieberman). As in Advisory Opinion 2001-08 (Specter), the Committee here indicates that the bulk rate it would pay is a standard fair market price that the publisher, under normal industry practice, makes available on equal terms to other large purchasers that are not political organizations or committees. Accordingly, although not explicitly asked in the instant advisory opinion request, the Commission similarly concludes here that the Committee's payment of this discounted bulk rate would not result in an impermissible in-kind corporate contribution from the publisher.

1 and thus would be used by the Committee only for the purpose of influencing Senator
2 Brown's election to Federal office; the quantity purchased would not exceed the number
3 needed for this described purpose; the royalties attributable to the Committee's purchase
4 would be donated to a charitable organization described in section 501(c)(3) of the
5 Internal Revenue Code or under chapter 12, section 8, of the Massachusetts General
6 Laws governing charitable organizations;⁷ and the Committee's purchase would be
7 removed by the Publisher from the royalty calculation. Accordingly, as in Advisory
8 Opinion 2001-08 (Specter), the use of Committee funds to purchase the book will defray
9 an expense that would not exist irrespective of Senator Brown's campaign and would not
10 be an impermissible personal use of campaign funds.

11 *Question 2. May the Committee post material promoting the book on its website and*
12 *social media sites?*

13
14 Yes, the Committee may post material promoting the book on its website because
15 the *de minimis* cost of adding a *de minimis* amount of promotional material to the
16 Committee's website does not constitute a prohibited personal use of campaign funds.
17 The Committee's proposal to post material promoting the book on social media sites as
18 described in the request is also permissible.

19 As noted above, the Act specifies that conversion to personal use occurs when a
20 "contribution or amount is used to fulfill any commitment, obligation, or expense of a
21 person that would exist irrespective of the candidate's election campaign or individual's
22 duties as a holder of Federal office." 2 U.S.C. 439a(b)(2); *see also* 11 CFR 113.1(g).

⁷ In prior advisory opinions in which a candidate's royalties were donated to charity, the Commission noted that the publisher would pay the relevant amounts directly to the charity. Here, Senator Brown has indicated that the Publisher would prefer to pay the amounts to Senator Brown to donate to the charitable organizations himself. The Commission does not find this factual difference to be material.

1 Here, Senator Brown's expenses as an author in marketing the book exist irrespective of
2 his campaign. The Commission has previously determined that the expenses associated
3 with marketing a book that a commercial publisher publishes and for which it pays
4 royalties to the candidate are expenses that would exist irrespective of the candidate's
5 election campaign or duties as a holder of Federal office. See Advisory Opinion 2006-07
6 (Hayworth) (candidate received royalties); see also Advisory Opinion 2006-18 (Granger)
7 (candidate donated royalties to charitable organizations). Therefore, the use of an
8 authorized committee's asset, such as the Committee's website, to promote the
9 candidate's book would ordinarily constitute a prohibited personal use. See Advisory
10 Opinions 2006-18 (Granger) and 2006-07 (Hayworth).

11 Nonetheless, in Advisory Opinion 2006-07 (Hayworth), the Commission
12 determined that the addition of promotional material about a candidate's book to an
13 authorized committee's substantial website did not constitute a prohibited personal use of
14 campaign funds, when both the amount of promotional material and the cost to the
15 committee were *de minimis*. See Advisory Opinion 2006-07 (Hayworth) (citing
16 favorably 11 CFR 113.1(g)(1)(ii)(D) (permitting *de minimis* vehicle expenses for
17 personal activities)).

18 The Committee here presents facts regarding its promotion of the book on its
19 website that are similar to those presented in Advisory Opinion 2006-07 (Hayworth).
20 Like Representative Hayworth, Senator Brown will receive royalties for all sales of his
21 book except the bulk sales to the Committee discussed above. The Committee
22 represents, as did Representative Hayworth's committee, that the cost of promoting the
23 book and book events on the Committee's website would be *de minimis*. Moreover, the

1 Committee indicates, as did Representative Hayworth's committee, that the amount of
2 material it plans to post to its website would be a *de minimis* addition to an otherwise
3 substantial website. Specifically, the Committee proposes to post material comprising
4 less than 25 percent of the website's homepage, with a link to only one of dozens of
5 pages on the Committee's website. Thus, the Committee's use of a *de minimis* amount of
6 its funds and assets to promote Senator Brown's book and book events on its website
7 would not be an impermissible personal use of campaign funds.

8 The Commission has not previously considered an authorized committee's use of
9 social media sites to promote a candidate's book. Because "personal use" is defined as
10 "any use of funds in a campaign account of a present or former candidate to fulfill a
11 commitment, obligation or expense of any person that would exist irrespective of the
12 candidate's campaign or duties as a Federal officeholder," there must be some proposed
13 use of campaign funds to implicate the personal use ban. 11 CFR 113.1(g); *see also*
14 2 U.S.C. 439a(b)(2). The use of a social media site by itself, however, would not
15 necessarily implicate the use of campaign funds, because these services are offered to the
16 public for free. As the Commission explained in Advisory Opinion 2004-06 (Meetup), in
17 the context of a free, internet-based service, "the provision of a service that is always
18 provided without charge to every person does not fall within" the general rule that a
19 corporation's provision of a service for free ordinarily results in a contribution. Advisory
20 Opinion 2004-06 (Meetup) at 3.

21 The Committee proposes that its social media posts promoting the book would be
22 of *de minimis* cost and comprise a *de minimis* amount of space on its otherwise
23 substantial social media sites. Specifically, the Committee proposes to post material

1 comprising no more than 25 percent of the page size of one of the Facebook pages, 10
2 percent of the Twitter page, and 25 percent of one of the LinkedIn pages. The
3 Committee's use of social media sites to promote Senator Brown's book and book events
4 in the manner described in the request would not be an impermissible personal use of
5 campaign funds. 11 CFR 113.1(g); *Cf.* Advisory Opinions 2006-07 (Hayworth) and
6 2004-06 (Meetup).

7 *Question 3. If Senator Brown personally reimburses the Committee for the fair market*
8 *value of its email and mailing lists, based on an independent list appraisal, may the lists*
9 *be used to promote the sale of his book?*

10

11 Yes, If Senator Brown personally reimburses the Committee for the fair market
12 value of the rental of its email and mailing lists, based on an independent list appraisal, he
13 may use the email and mailing list to promote the sale of his book.

14 As noted above, the Act and Commission regulations provide that a candidate and
15 the candidate's authorized committees have wide discretion in making expenditures to
16 influence the candidate's election, but may not convert excess campaign funds to
17 personal use. 2 U.S.C. 439a; 11 CFR 113.1(g) and 113.2; *see also* Advisory Opinions
18 2006-18 (Granger), 2006-07 (Hayworth), and 2001-08 (Specter). Additionally,
19 Commission regulations provide that "the transfer of a campaign committee asset is not
20 personal use so long as the transfer is for fair market value." 11 CFR 113.1(g)(3).

21 The Commission has long recognized that a political committee's mailing lists are
22 assets that have value and that are frequently sold, rented, or exchanged in a market. *See,*
23 *e.g.,* Advisory Opinions 2002-14 (Libertarian National Committee), 1982-41 (Dellums),
24 and 1981-46 (Dellums). In Advisory Opinion 2006-18 (Granger), the Commission
25 permitted a candidate's authorized committee to use the committee's mailing list to

1 . promote the candidate's book, without requiring that the candidate reimburse the
2 committee for the fair market value of the use of the list. In that advisory opinion,
3 however, the candidate was not receiving any royalties from the sale of the book.
4 Therefore, the Commission found that "she will not personally gain from the use of
5 Committee funds or assets for the contemplated activities." *Id.* The Commission
6 determined that "in light of the absence of any such personal benefit from the proposed
7 activities . . . the proposed activities do not constitute a prohibited personal use of
8 campaign funds." *Id.*

9 In this case, by contrast, Senator Brown will receive royalties from the sale of the
10 book. However, Senator Brown proposes to reimburse the Committee for the fair market
11 value of the lists, as determined by an independent list broker. This proposed course of
12 conduct will not result in a prohibited personal use of campaign funds.

13 *Question 4. May Senator Brown host fundraising events in cities where the book*
14 *Publisher pays his travel costs to promote the book?*

15
16 Yes, Senator Brown may host fundraising events in cities where the book
17 Publisher pays his travel costs to promote the book.

18 The Act and Commission regulations prohibit corporations from making
19 contributions in connection with Federal elections. 2 U.S.C. 441b(a); 11 CFR 114.2(b).
20 Under 2 U.S.C. 441b, the term "contribution" includes a contribution as that term is
21 defined in 2 U.S.C. 431, "and also includes any direct or indirect payment, distribution,
22 loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any
23 candidate, campaign committee, or political party or organization," in connection with
24 any election to any Federal office. 2 U.S.C. 441b(b)(2); *see also* 11 CFR 114.2(b)(1).

1 Moreover, 2 U.S.C. 431 defines a contribution as including “any gift, subscription, loan,
2 advance, or deposit of money or anything of value made by any person for the purpose of
3 influencing any election for Federal office.” 2 U.S.C. 431(8)(A)(i); 11 CFR 100.52(a).

4 Thus, for example, a prohibited corporate contribution would result if a corporate
5 publisher paid the expenses of an event that has the dual purpose of promoting a book
6 and raising funds in connection with a Federal election. *See* Advisory Opinion 1982-16
7 (Green). Accordingly, any fundraising event that Senator Brown attends or hosts must be
8 separate from the promotional appearances paid for by the Publisher.

9 At the same time, however, the Commission recognizes that a candidate may need
10 to travel for “a mixture of personal and campaign or officeholder related activities.”
11 Explanation and Justification for Final Rules on Expenditures; Reports by Political
12 Committees; Personal Use of Campaign Funds, 60 FR 7862, 7869 (Feb. 9, 1995).

13 The Commission addressed air travel in Advisory Opinion 2002-05 (Hutchinson).
14 In that advisory opinion, an incumbent mayor who was also a candidate for Federal office
15 travelled to Washington, DC, as part of a delegation of local officials and business
16 representatives to conduct city business. While in Washington, the mayor also engaged
17 in campaign activities and conducted some personal business. The Commission
18 determined that the airfare for the trip “represents a defined expense that would have
19 existed irrespective of any personal or campaign related activities.” Advisory Opinion
20 2002-05 (Hutchinson). As such, the entire cost of the airfare could be paid by the

1 corporate city entity, with no obligation on the part of the candidate or her committee to
2 reimburse the city for the cost.⁸ *Id.*

3 The facts presented in this request are similar to those presented in Advisory
4 Opinion 2002-05 (Hutchinson). The Publisher will pay the travel costs, via commercial
5 carriers at ordinary commercial rates, for Senator Brown to promote the book in various
6 cities. While in those cities, Senator Brown plans to participate in campaign fundraising
7 without incurring any additional travel costs. Thus, the airfare to those cities is a defined
8 expense that would have existed irrespective of any personal or campaign activities, and
9 the entire cost of the airfare may be paid by the Publisher with no obligation by Senator
10 Brown or the Committee to reimburse the cost.

11 If the fundraising events generate non-airfare travel costs (such as lodging, meals,
12 and local transportation) in addition to those paid by the Publisher to promote the book,
13 then campaign funds have to be used to pay the additional expenses. *See* Advisory
14 Opinion 2002-05 (Hutchinson), at n.8. The use of campaign funds to pay for the
15 additional travel expenses incurred as a result of Senator Brown's campaign-related
16 activity would not constitute personal use of campaign funds, even if Senator Brown also
17 engages in personal activity during the trip. *See id.*

18 *Question 5. May the Committee collect email addresses of people who attend the*
19 *Senator's book signing and promotional events, for the purpose of soliciting*
20 *contributions in the future?*

21

⁸ In Advisory Opinion 2002-05 (Hutchinson), the Commission determined that it would analyze Mayor Hutchinson's travel costs under the personal use provisions of the Act and Commission regulations rather than under the provisions concerning the allocation of travel expenses in 11 CFR 106.3(b)(3). Similarly, here the Commission will analyze Senator Brown's travel costs under the personal use provisions of the Act and Commission regulations.

1 **Yes, the Committee may collect email addresses from people who attend the**
2 **Senator’s book signing and promotional events for the purposes of soliciting**
3 **contributions in the future.**

4 **As noted above, the Act and Commission regulations prohibit corporations from**
5 **making contributions, including “any direct or indirect payment, distribution, loan,**
6 **advance, deposit, or gift of money, or any services, or anything of value . . . to any**
7 **candidate, campaign committee, or political party or organization,” in connection with**
8 **any election to any Federal office. 2 U.S.C. 441b(b)(2) (emphasis added); see also**
9 **2 U.S.C. 431(8)(A)(i); 11 CFR 114.2(b) and 11 CFR 100.52(a) and (b). Here, however,**
10 **the book signing and promotional events to be paid for by the Publisher are not**
11 **fundraising events, nor are they otherwise in connection with a Federal election. Rather,**
12 **they are intended to generate publicity for, and purchases of, Senator Brown’s book. The**
13 **Committee’s mere collection of email addresses at the events, even if the people who**
14 **provide those email addresses receive future solicitations from the Committee, does not**
15 **convert these events into fundraising events or events in connection with a Federal**
16 **election. Therefore, since the Publisher is providing nothing of value in connection with**
17 **a Federal election, the Committee may collect email addresses from people who attend**
18 **the book signing and promotional events.**

19 **The Commission expresses no opinion regarding the application of the rules of**
20 **the United States Senate or any tax law ramifications of the proposed activities, because**
21 **those are not within the Commission’s jurisdiction.**

22 **This response constitutes an advisory opinion concerning the application of the**
23 **Act and Commission regulations to the specific transaction or activity set forth in your**

1 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
2 of the facts or assumptions presented, and such facts or assumptions are material to a
3 conclusion presented in this advisory opinion, then the requestor may not rely on that
4 conclusion as support for its proposed activity. Any person involved in any specific
5 transaction or activity which is indistinguishable in all its material aspects from the
6 transaction or activity with respect to which this advisory opinion is rendered may rely on
7 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or
8 conclusions in this advisory opinion may be affected by subsequent developments in the
9 law, including, but not limited to, statutes, regulations, advisory opinions, and case law.
10 The cited advisory opinions are available on the Commission's website, www.fec.gov, or
11 directly from the Commission's Advisory Opinion searchable database at
12 <http://saos.nictusa.com/saos/searchao>.

13 On behalf of the Commission,

14
15
16 Cynthia L. Bauerly
17 Chair

1 **ADVISORY OPINION 2011-02**

2

3 **Daniel B. Winslow, Esq.**

4 **Proskauer Rose LLP**

5 **One International Place**

6 **Boston, MA 02110**

7

8

9 **Dear Mr. Winslow:**

DRAFT B

10 **We are responding to your advisory opinion request on behalf of Senator Scott**
11 **Brown and the Scott Brown for U.S. Senate Committee (the “Committee”) concerning**
12 **the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), to**
13 **several proposed activities relating to the upcoming publication and promotion of Senator**
14 **Brown’s autobiography (the “book”).**

15 **The Commission concludes that Senator Brown and the Committee may engage**
16 **in some, but not all of the proposed activities. The Committee may use campaign funds**
17 **to purchase copies of the book from the book’s publisher at the fair market price,**
18 **provided that the publisher donates to charity Senator Brown’s royalties from sales of the**
19 **book to the Committee. The Committee may not post the proposed material promoting**
20 **the book on its website and social media sites. The Committee may allow the use of its**
21 **email and mailing lists to promote the book if Senator Brown personally reimburses the**
22 **Committee for the fair market value of the rental of its lists. Senator Brown may host**
23 **fundraising events in cities where the publisher pays his travel costs to promote the book,**
24 **provided that the Committee reimburses the publisher for the proportion of the travel**
25 **costs attributable to time spent on campaign activity relative to time spent promoting the**
26 **book. Finally, the Committee may not collect email addresses of people who attend the**

1 Senator's book signing and promotional events for the purpose of soliciting contributions
2 in the future.

3 ***Background***

4 The facts presented in this advisory opinion are based on your letter received on
5 January 14, 2011, as supplemented by your emails received on January 24, January 28,
6 and February 4, 2011.

7 The Committee is Senator Brown's principal campaign committee for his re-
8 election to the United States Senate.¹ Senator Brown's autobiography, *Against All Odds*,
9 will be published by Harper Collins (the "Publisher"), on or about February 20, 2011.
10 Following the publication of the book, Senator Brown will promote the book in a national
11 book tour during the Senate's February recess (the week of February 20, 2011).

12 Senator Brown's agreement with the Publisher was reviewed by the Senate Select
13 Committee on Ethics, which determined that the agreement adheres to the traditional
14 standards and practices in the publishing industry. The agreement provides for the
15 Publisher's payment of advances as well as royalties to Senator Brown. The royalties
16 will be determined as a percentage of net sales revenue.

17 The Committee proposes to purchase several thousand copies of the book, though
18 not more than the number needed, for campaign-related activities. The Committee plans
19 to use the book to influence Senator Brown's election, such as by distributing books as
20 "thank you" gifts to campaign contributors and political supporters. The Committee will
21 purchase these books at either (a) a bulk rate that is a standard fair market price that the

¹ The Committee filed its first Statement of Organization with the Commission on September 17, 2009. On January 26, 2010, Senator Brown filed with the Commission a Statement of Candidacy for the 2012 Senate election.

1 Publisher, under normal industry practice, makes available on equal terms to other large
2 purchasers that are not political organizations or committees, or (b) at the usual retail
3 price of the book, if the bulk rate is unavailable. Senator Brown proposes to donate the
4 royalties from the Committee's bulk purchase of the book to a charitable organization
5 described in section 501(c)(3) of the Internal Revenue Code or under chapter 12, section
6 8, of the Massachusetts General Laws governing charitable organizations. Alternatively,
7 the Publisher is willing to donate Senator Brown's royalties for sales of the book to the
8 Committee to a charitable organization.

9 The Committee proposes to promote Senator Brown's book by posting
10 information on its website about the book and the book tour. The Committee's website,
11 www.scottbrown.com, includes pages grouped by tabs that divide website content into
12 categories, such as News, Events, Issues, and Contribute. The Committee updates its
13 website daily. The Committee would like to post information on its website home page,
14 and this information will consume no more than 25 percent of the home page, with a link
15 to another page with more information, including how to purchase the book and where to
16 meet Senator Brown on the book tour. The Committee's website also includes links to
17 the Committee's social media sites on Facebook and Twitter.

18 The Committee proposes to post similar information on its Facebook fan page,
19 Twitter feed, and LinkedIn site.

1 • Facebook. The Committee proposes to post book promotional information on its
2 Facebook Wall² or “Info” page. These posts would consume no more than 25
3 percent of the Facebook page on which they are posted.

4 • Twitter. The Committee would like to tweet³ about Senator Brown’s activities on
5 the book promotional tour. For example, a tweet might state: “I’m at the
6 bookstore in LA, come see me and say hello” and include a link to the website
7 page with information about the book. The tweets about the book would
8 comprise less than 10 percent of the Committee’s Twitter page.

9 • LinkedIn. Senator Brown’s LinkedIn page similarly contains information about
10 him and links to his website. The Committee’s proposed posts on Senator
11 Brown’s LinkedIn page would link to the Committee’s website page containing
12 information about the book, would be small compared to other content, and be no
13 more than 25 percent of a page.

14 The Committee also proposes to promote the book to individuals on the
15 Committee’s email and mailing lists. The Committee’s email and mailing address
16 database includes contact information for thousands of persons who have contributed to
17 the Committee.

18 The Publisher will pay the travel and other costs of the book tour and promotional
19 appearances. Travel will be on commercial carriers at ordinary commercial rates.

² A Facebook “Wall” is “a place to post and share content with your friends.” Facebook Help Center: Using Facebook, <http://www.facebook.com/help/?faq=13153> (last visited Feb. 2, 2011). The Committee characterizes Senator Brown’s Facebook Wall as “essentially a bulletin board where fans and friends can post notes.”

³ A “tweet” is a “message posted via Twitter containing 140 characters or fewer.” Twitter Help Center: The Twitter Glossary, <http://support.twitter.com/articles/166337-the-twitter-glossary> (last visited Feb. 2, 2011). As a verb, to “tweet” is to post a message on Twitter. *Id.*

1 Although the principal reason for Senator Brown's travel is to promote the book,
2 Senator Brown, while on the book tour, also wishes to host fundraising events for the
3 Committee in the cities to which he will travel. Senator Brown's attendance at these
4 fundraisers would be ancillary to his presence in those areas to promote his book. The
5 Committee assumes that Senator Brown's participation in fundraising would add no
6 additional travel costs to those to be paid by the Publisher.

7 Finally, the Committee proposes to have a campaign staffer collect email
8 addresses from people who attend Senator Brown's book signing events on the book tour.
9 The Committee does not propose to rely on the Publisher in collecting this data. The
10 Committee plans to use the email addresses that it collects to apprise people of
11 Committee news and activities and for future solicitations of contributions.

12 ***Questions Presented***
13

- 14 1. *May the Committee use campaign funds to purchase copies of the book at the fair*
15 *market price, and, if so, may Senator Brown donate to charity the royalties from*
16 *bulk sales of the book to the Committee, or must he forego those royalties*
17 *entirely?*
18
19 2. *May the Committee post material promoting the book on its website and social*
20 *media sites?*
21
22 3. *May the Committee allow use of its email and mailing lists to promote the book if*
23 *Senator Brown personally reimburses the Committee for the fair market value of*
24 *its email and mailing lists, based on an independent list appraisal?*⁴
25
26 4. *May Senator Brown host fundraising events in cities where the book Publisher*
27 *pays his travel costs to promote the book?*
28

⁴ The advisory opinion request included two alternative questions, if the Commission does not give an affirmative response to Question 3. The Commission is not addressing these alternative questions because it concludes that the Committee may engage in the activity discussed in Question 3.

1 5. *May the Committee collect email addresses of people who attend the Senator's*
2 *book signing and promotional events, for the purpose of soliciting contributions*
3 *in the future?*
4

5 ***Legal Analysis and Conclusions***
6

7 ***Question 1. May the Committee use campaign funds to purchase copies of the book at***
8 ***the fair market price, and, if so, may Senator Brown donate to charity the royalties from***
9 ***bulk sales of the book to the Committee, or must he forego those royalties entirely?***
10

11 Yes, the Committee may use campaign funds to purchase copies of the book from
12 the publisher at the fair market price. However, Senator Brown may not receive the
13 royalties himself. The publisher may donate to charity the amount that Senator Brown
14 would have otherwise earned as royalties from sales of the book to the Committee.

15 Under the Act and Commission regulations, a candidate and his authorized
16 committee have wide discretion in making expenditures to influence the candidate's
17 election. 2 U.S.C. 439a(a); 11 CFR 113.2. There are six categories of permissible uses
18 of contributions received by a Federal candidate, including for otherwise authorized
19 expenditures in connection with the candidate's campaign for Federal office and for any
20 other lawful purpose. 2 U.S.C. 439a(a); 11 CFR 113.1(g) and 113.2(a). Such uses must
21 not, however, result in the conversion of campaign funds to the personal use of the
22 candidate or any other person. 2 U.S.C. 439a(b); 11 CFR 113.1(g) and 113.2(e)(5).

23 The Act provides that "a contribution or a donation shall be considered to be
24 converted to personal use if the contribution or amount is used to fulfill any
25 commitment, obligation or expense of a person that would exist irrespective of the
26 candidate's election campaign or individual's duties as a holder of Federal office." 2
27 U.S.C. 439a(b)(2); *see also* 11 CFR 113.1(g). The Act and Commission regulations
28 provide a non-exhaustive list of uses of campaign funds that are *per se* personal use.

1 2 U.S.C. 439a(b)(2); 11 CFR 113.1(g)(1)(i). For uses of campaign funds not on this list,
2 the Commission determines, on a case-by-case basis, whether a use of campaign funds
3 would fall within the definition of “personal use.” 11 CFR 113.1(g)(1)(ii).

4 In several prior advisory opinions, the Commission has considered whether the
5 purchase by an authorized committee of its candidate’s book is personal use. *See, e.g.*,
6 Advisory Opinions 2006-18 (Granger), 2004-18 (Lieberman), 2001-08 (Specter), 1995-
7 46 (D’Amato), and 1993-20 (Nighthorse Campbell). The facts presented in this request
8 are particularly similar to those presented in Advisory Opinion 2001-08 (Specter). In that
9 advisory opinion, the Commission determined that the use of the authorized committee’s
10 campaign funds to purchase its candidate’s book would defray an expense that would not
11 exist irrespective of the campaign and would not be an impermissible personal use. The
12 Commission’s conclusion was based on several facts: the authorized committee’s funds
13 would be used to purchase the book solely for distribution to the committee’s
14 contributors and supporters, and thus would be used by the committee only for the
15 purpose of influencing its candidate’s election to Federal office; the quantity purchased
16 would not exceed the number needed for this described purpose; all royalties attributable
17 to the committee’s purchase would be paid by the publisher to charity; and the
18 committee’s purchase would be removed by the publisher from the royalty calculation.⁵

⁵ Advisory Opinion 2001-08 (Specter) also addressed whether the Committee’s bulk purchase of the book at a discounted rate would result in an in-kind contribution by the publisher. *See* 2 U.S.C. 441b(a); 11 CFR 114.2(b). The Commission concluded that no in-kind contribution would result, because the discounted items were made available in the ordinary course of business and on the same terms and conditions to the vendor’s other customers that were not political committees. Advisory Opinion 2001-08 (Specter); *see also* Advisory Opinion 2004-18 (Lieberman). As in Advisory Opinion 2001-08 (Specter), the Committee here indicates that the bulk rate it would pay is a standard fair market price that the publisher, under normal industry practice, makes available on equal terms to other large purchasers that are not political organizations or committees. Accordingly, although not explicitly asked in the instant advisory opinion

1 Similarly, here, the Committee's funds would be used to purchase the book solely
2 for distribution as gifts to the Committee's financial contributors and political supporters,
3 and thus would be used by the Committee only for the purpose of influencing Senator
4 Brown's election to Federal office; the quantity purchased would not exceed the number
5 needed for this described purpose. However, unlike in Advisory Opinion 2001-08
6 (Specter), Senator Brown proposes to personally receive royalties for sales of the book to
7 the Committee and then donate those funds to a charitable organization described in
8 section 501(c)(3) of the Internal Revenue Code or under chapter 12, section 8, of the
9 Massachusetts General Laws governing charitable organizations. In the alternative, the
10 Publisher is willing to donate Senator Brown's royalties for sales of the book to the
11 Committee to a charitable organization. Furthermore, Senator Brown has not indicated
12 that the Committee's purchase would be removed by the Publisher from the royalty
13 calculation.

14 The Act provides that "[a] contribution accepted by a candidate" may be used for,
15 among other things, "contributions to an organization described in section 170(c) of the
16 Internal Revenue Code of 1986." 2 U.S.C. 439a(a); *see* 11 CFR 113.1(g)(2). However,
17 the Act limits such contributions by providing that "[a] contribution or donation
18 described in subsection (a) shall not be converted by any person to personal use."
19 2 U.S.C. 439a(b)(1). Thus, Senator Brown may not personally accept royalties for sales
20 of the book to the Committee, even if he then makes charitable contributions equal to that
21 amount. Senator Brown must also not receive any personal benefit, tangible or

request, the Commission similarly concludes here that the Committee's payment of this discounted bulk rate would not result in an impermissible in-kind corporate contribution from the publisher.

1 intangible, for the royalties the Publisher donates to charity for the sales of the book to
2 the Committee.⁶

3 Accordingly, as in Advisory Opinion 2001-08 (Specter), the use of Committee
4 funds to purchase the book will defray an expense that would not exist irrespective of
5 Senator Brown's campaign and would not be an impermissible personal use of campaign
6 funds if all royalties for the committee's purchase are paid by the Publisher to charity
7 with no personal benefit to Senator Brown.

8 *Question 2. May the Committee post material promoting the book on its website and*
9 *social media sites?*

10
11 No, the Committee may not post material promoting the book on its website and
12 social media sites because posting the proposed material to the Committee's website and
13 social media sites would constitute a prohibited personal use of campaign funds.

14 As noted above, the Act specifies that conversion to personal use occurs when a
15 "contribution or amount is used to fulfill any commitment, obligation, or expense of a
16 person that would exist irrespective of the candidate's election campaign or individual's
17 duties as a holder of Federal office." 2 U.S.C. 439a(b)(2); *see also* 11 CFR 113.1(g).
18 Here, Senator Brown's expenses as an author in advertising the book exist irrespective of
19 his campaign. The Commission has previously determined that the expenses associated
20 with marketing a book that a commercial publisher publishes and for which it pays
21 royalties to the candidate are expenses that would exist irrespective of the candidate's
22 election campaign or duties as a holder of Federal office. *See* Advisory Opinion 2006-07

⁶ Pursuant to Advisory Opinion 2006-18 (Granger), Senator Brown may designate the charitable organization to which the Publisher donates royalties from the sale of the book to the Committee. *See also* Advisory Opinion 1995-46 (D'Amato).

1 (Hayworth) (candidate received royalties); *see also* Advisory Opinion 2006-18 (Granger)
2 (candidate donated royalties to charitable organizations). Therefore, the use of an
3 authorized committee's asset, such as the Committee's website, to promote the
4 candidate's book would constitute a prohibited personal use.

5 In Advisory Opinion 2006-07 (Hayworth), the Commission determined that the
6 addition of promotional material about a candidate's book to an authorized committee's
7 substantial website did not constitute a prohibited personal use of campaign funds, when
8 both the amount of promotional material and the cost to the committee were *de minimis*.
9 In contrast, the Committee here proposes to post content on its website that would not
10 constitute a *de minimis* amount of promotional material. Representative Hayworth
11 proposed to post on his campaign website a single sentence mentioning the availability of
12 his book at bookstores and online. The Committee, on the other hand, proposes to post
13 material promoting Senator Brown's book comprising up to 25 percent of the website's
14 homepage. This is not a *de minimis* amount of material. *Cf.* Advisory Opinion 2002-05
15 (Hutchinson) (finding that 25% of a trip spent on campaign related activity was not an
16 "incidental" amount of time); Advisory Opinion 2001-03 (Meeks) (finding that up to 5%
17 use of a vehicle is *de minimis*). Senator Brown will receive royalties for all sales of his
18 book except for the sales to the Committee discussed above. Thus, the Committee's use
19 of its funds and assets to promote Senator Brown's book and book events on its website
20 would be an impermissible personal use of campaign funds.

21 Because the Commission has not previously considered an authorized
22 committee's use of social media sites to promote a candidate's book, the Commission
23 considers the website advisory opinions discussed above as useful analogies. The facts

1 presented here indicate that the Committee's use of social media is similar to its use of its
2 own website. The Committee estimates that its social media posts promoting the book
3 would, like its website posts, comprise up to 25 percent of the page size of one of the
4 Facebook pages, 10 percent of the Twitter page, and 25 percent of one of the LinkedIn
5 pages. As with the website posts, this amount of material is not *de minimis*. Thus, the
6 Committee's use of its funds and assets to promote Senator Brown's book and book
7 events on its social media sites would be an impermissible personal use of campaign
8 funds.

9 *Question 3. May the Committee allow use of its email and mailing lists to promote the*
10 *book if Senator Brown personally reimburses the Committee for the fair market value of*
11 *its email and mailing lists, based on an independent list appraisal?*

12
13 Yes, the Committee may allow use of its email and mailing lists to promote
14 Senator Brown's book, if Senator Brown personally reimburses the Committee for the
15 fair market value of the rental of its email and mailing lists, based on an independent list
16 appraisal.

17 As noted above, the Act and Commission regulations provide that a candidate and
18 the candidate's authorized committees have wide discretion in making expenditures to
19 influence the candidate's election, but may not convert excess campaign funds to
20 personal use. 2 U.S.C. 439a; 11 CFR 113.1(g) and 113.2; *see also* Advisory Opinions
21 2006-18 (Granger), 2006-07 (Hayworth), and 2001-08 (Specter). Additionally,
22 Commission regulations provide that "the transfer of a campaign committee asset is not
23 personal use so long as the transfer is for fair market value." 11 CFR 113.1(g)(3).

24 The Commission has long recognized that a political committee's mailing lists are
25 assets that have value and that are frequently sold, rented, or exchanged in a market. *See,*

1 e.g., Advisory Opinions 2002-14 (Libertarian National Committee), 1982-41 (Dellums),
2 and 1981-46 (Dellums). In Advisory Opinion 2006-18 (Granger), the Commission
3 permitted a candidate's authorized committee to use the committee's mailing list to
4 promote the candidate's book, without requiring that the candidate reimburse the
5 committee for the fair market value of the use of the list. In that advisory opinion,
6 however, the candidate was not receiving any royalties from the sale of the book.
7 Therefore, the Commission found that "she will not personally gain from the use of
8 Committee funds or assets for the contemplated activities." *Id.* The Commission
9 determined that "in light of the absence of any such personal benefit from the proposed
10 activities . . . the proposed activities do not constitute a prohibited personal use of
11 campaign funds." *Id.*

12 In this case, by contrast, Senator Brown *will* receive royalties from the sale of the
13 book. Thus, the use of the Committee's email and mailing lists are subject to the
14 personal use regulations. 11 CFR 113.1(g). Accordingly, under 11 CFR 113.1(g)(3), the
15 Committee may allow use of the lists to promote Senator Brown's book, as long as the
16 rental of the list is for fair market value, which will be determined by an appraisal by an
17 independent list broker.

18 *Question 4. May Senator Brown host fundraising events in cities where the book*
19 *Publisher pays his travel costs to promote the book?*

20
21 Yes, Senator Brown may host fundraising events in cities where the Publisher
22 pays his travel costs to promote the book, provided that the Committee reimburses the
23 Publisher for the proportion of the travel costs attributable to time spent on campaign
24 activity relative to time spent promoting the book. If the fundraising events generate

1 other costs, including travel (such as lodging, meals, and local transportation), then
2 campaign funds also have to be used to pay those expenses.

3 The Act and Commission regulations prohibit corporations from making
4 contributions in connection with Federal elections. 2 U.S.C. 441b(a); 11 CFR 114.2(b).
5 Under 2 U.S.C. 441b, the term “contribution” includes a contribution as that term is
6 defined in 2 U.S.C. 431, “and also includes any direct or indirect payment, distribution,
7 loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any
8 candidate, campaign committee, or political party or organization,” in connection with
9 any election to any Federal office. 2 U.S.C. 441b(b)(2); *see also* 11 CFR 114.2(b)(1).
10 Moreover, 2 U.S.C. 431 defines a contribution as including “any gift, subscription, loan,
11 advance, or deposit of money or anything of value made by any person for the purpose of
12 influencing any election for Federal office.” 2 U.S.C. 431(8)(A)(i); 11 CFR 100.52(a).

13 Thus, for example, a prohibited corporate contribution would result if a corporate
14 publisher paid the expenses of an event that has the dual purpose of promoting a book
15 and raising funds in connection with a Federal election. *See* Advisory Opinion 1982-16
16 (Green). Accordingly, any fundraising event that Senator Brown attends or hosts must be
17 separate from the promotional appearances paid for by the Publisher. The Committee
18 must pay all expenses for the cost of any such event. Similarly, any payment by the
19 Publisher for expenses related to a fundraising event for the Committee would be a
20 corporate contribution in violation of 2 U.S.C. 441b. *See* Advisory Opinion 1982-16
21 (Green).

22 Furthermore, as explained above, campaign funds must not be converted to the
23 personal use of the candidate or any other person. 2 U.S.C. 439a(b); 11 CFR 113.1(g)

1 and 113.2(e)(5). The Committee must therefore not use campaign funds to pay for costs
2 on the tour related to promoting or marketing Senator Brown's book. The Commission
3 determines, on a case-by-case basis, whether a use of campaign funds would fall within
4 the definition of "personal use." 11 CFR 113.1(g)(1)(ii).

5 Travel costs for a book tour like the one proposed by Senator Brown thus present
6 both the problem of possible personal use of campaign funds (if the Committee uses
7 campaign funds for expenses related to the promotion of the book) and the problem of
8 prohibited corporate contributions (if the Publisher pays expenses related to a campaign
9 event). Nonetheless, the Commission recognizes that a candidate may need to travel for
10 "a mixture of personal and campaign or officeholder related activities." Explanation and
11 Justification for Final Rules on Expenditures; Reports by Political Committees; Personal
12 Use of Campaign Funds, 60 FR 7862, 7869 (Feb. 9, 1995) ("1995 Personal use E&J").

13 The Commission addressed air travel in Advisory Opinion 2002-05 (Hutchinson).
14 As explained in that opinion, 11 CFR 106.3(b) governs allocation of expenses between
15 campaign and non-campaign related travel with respect to candidates for Federal office
16 (other than Presidential and Vice Presidential candidates who receive Federal funds). For
17 a candidate's trip to a city that includes both campaign and non-campaign events, the
18 regulations at 11 CFR 106.3(b)(3) "seem to require that, rather than just a portion, the
19 entire amount of the travel expenses for the trip would be considered campaign related,
20 unless the campaign related portion is incidental." Advisory Opinion 2002-05
21 (Hutchinson). Historically, the Commission has accordingly required campaign funds to
22 be used for all travel costs under such circumstances. See Advisory Opinions 1992-34
23 (Castle for Congress) and 1994-37 (Schumer).

1 However, in Advisory Opinion 2002-05 (Hutchinson), the Commission
2 determined that the use of campaign funds for all travel costs of mixed-purpose trips was
3 no longer consistent with current personal use regulations. In that advisory opinion, an
4 incumbent mayor who was also a candidate for Federal office travelled to Washington,
5 DC, as part of a yearly delegation of local officials and business representatives to
6 conduct city business. While in Washington, the mayor also engaged in campaign
7 activities and conducted some personal business. The Commission determined that the
8 airfare for the trip “represents a defined expense that would have existed irrespective of
9 any personal or campaign related activities.” Advisory Opinion 2002-05 (Hutchinson).
10 As such, the entire cost of the airfare could be paid by the corporate city entity, with no
11 obligation on the part of the candidate or her committee to reimburse the city for the cost.
12 *Id.*; see also MUR 6127 (Obama for America et al.), First General Counsel’s Report, at 6
13 n.5 (“[W]here the trip would have occurred irrespective of any campaign activity, the
14 candidate [personally] would have to pay for the airfare.”).

15 In the current situation, the Commission is unable to conclude that Senator
16 Brown’s book tour represents a defined expense that would have existed irrespective of
17 any campaign or office related activities. In Advisory Opinion 2002-05 (Hutchinson), the
18 trip was conducted each year for city officials on business unrelated to Hutchinson’s
19 Federal campaign. The book tour is not an event that predates Senator Brown’s Federal
20 office or his campaign; Senator Brown will be simultaneously planning both the book
21 tour and the campaign events. The Publisher has also represented that Senator Brown’s

1 election to the Senate is a substantial topic of the book.⁷ These factors make it difficult to
2 be certain that the book tour would have existed irrespective of Senator Brown's
3 campaign or office. Furthermore, in Advisory Opinion 2002-05 (Hutchinson), all
4 campaign activity was conducted on separate days from Hutchinson's duties as mayor.
5 Senator Brown has not proposed any similar separation between his campaign activities
6 and his book tour.

7 Under these circumstances, the Commission concludes that the cost of travel to
8 and from each city on the book tour must be apportioned between the Committee and the
9 Publisher, on the basis of the relative amount of time spent on campaign activity in
10 comparison to time spent promoting the book. (Travel costs may be paid by either the
11 Committee or the Publisher, with reimbursement by the other party in the appropriate
12 amount.) This method will best ensure that neither the Committee nor the Publisher pays
13 an inappropriate share of the expenses. If the fundraising events generate other costs,
14 including travel (such as lodging, meals, and local transportation), then campaign funds
15 also have to be used to pay those expenses. See Advisory Opinion 2002-05 (Hutchinson),
16 at n.8. The use of campaign funds to pay for the additional travel expenses incurred as a
17 result of Senator Brown's campaign-related activity would not constitute personal use of
18 campaign funds, even if Senator Brown also engages in personal activity during the trip.
19 *See id.*

⁷ See Harper Collins, Overview: Against All Odds, http://www.harpercollinscatalogs.com/harper/527_1738_333039393139.htm#readmore ("Here, too, are the secrets from the unprecedented Senate race that captured the country's imagination and how Scott Brown won his remarkable victory.").

1 *Question 5. May the Committee collect email addresses of people who attend the*
2 *Senator's book signing and promotional events, for the purpose of soliciting*
3 *contributions in the future?*
4

5 No, the Committee may not collect email addresses from people who attend the
6 Senator's book signing and promotional events for the purposes of soliciting
7 contributions in the future.

8 As noted above, the Act and Commission regulations prohibit corporations from
9 making contributions, including "any direct or indirect payment, distribution, loan,
10 advance, deposit, or gift of money, or any services, or *anything of value . . .* to any
11 candidate, campaign committee, or political party or organization," in connection with
12 any election to any Federal office. 2 U.S.C. 441b(b)(2) (emphasis added); *see also* 2
13 U.S.C. 431(8)(A)(i); 11 CFR 114.2(b) and 11 CFR 100.52(a) and (b). This prohibition
14 includes in-kind contributions, the provision of any goods or services without charge or at
15 a charge that is less than the usual and normal charge for such goods or services. 11 CFR
16 100.53(d)(1). "Examples of such goods or services include, but are not limited to:
17 Securities, facilities, equipment, supplies, personnel, advertising services, membership
18 lists, and mailing lists." *Id.*

19 The Publisher's organization of book signings and other promotional events may
20 involve various expenses, potentially including planning, marketing, and the provision of
21 venue. The Committee's participation in such events would allow the Committee to take
22 advantage of the expenses borne by the Publisher in the organization of these events. The
23 Committee's participation in book signings and other promotional events would therefore
24 constitute prohibited corporate contributions to the Committee by the Publisher.

1 Additionally, Commission regulations prohibit corporations and labor
2 organizations from facilitating the making of contributions, which is defined as “using
3 corporate or labor organization resources or facilities to engage in fundraising activities
4 in connection with any Federal election . . .” 11 CFR 114.2(f). The Committee has
5 indicated that its participation in the book signings and promotional events would be for
6 fundraising. The Publisher will be spending its resources in the organization of such
7 events. Since the Committee’s participation in book signings and promotional events
8 would allow the Committee to take advantage of the expenses borne by the Publisher to
9 engage in fundraising activities, the Committee’s participation would constitute
10 prohibited corporate facilitation of contributions. *See* Advisory Opinion 2007-10 (Reyes)
11 (“Neither a corporation nor its agents may use the corporation’s resources to facilitate the
12 making of contributions to a federal political committee other than the corporation’s
13 SSF.”); *see also, e.g.,* MUR 6127 (Obama for America et al.), First General Counsel’s
14 Report, at 13-16 (use of corporate email list for campaign fundraiser without advance
15 payment constituted improper corporate facilitation of contributions).

16 The Commission has previously considered and rejected a request to hold a “dual
17 purpose” event for fundraising and the promotion of a candidate’s book. *See* Advisory
18 Opinion 1982-16 (Green). Similarly, the Committee may not collect email addresses of
19 people who attend the Senator’s book signing and promotional events for the purpose of
20 soliciting contributions.

21 The Commission expresses no opinion regarding the application of the rules of
22 the United States Senate or any tax law ramifications of the proposed activities, because
23 those are not within the Commission’s jurisdiction.

