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May 31, 2019

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
Office of General Counsel
1050 First Street, NE
Washington, DC 20463

Re: Advisory Opinion Request

Dear Ms. Stevenson

Pursuant to 11 CFR § 112.1 and 52 U.S.C. § 30108 (formerly 2 U.S.C. § 437f) the Price for Congress committee (FEC ID: C00386755) (the "Committee") seeks an advisory opinion. The Committee seeks confirmation that under the Federal Election Campaign Act of 1971, as amended (the "Act") and Federal Election Commission (the "Commission") regulations, the Committee may, subject to the limitations set out below, contribute funds to establish and operate an organization described in section 170(c) of title 26 (the "Organization").

Background

Proposed Structure of the Organization

The Organization will be established by the Honorable Dr. Thomas Price, who will serve as President and CEO of the Organization. The Bylaws of the Organization will prohibit Dr. Price from receiving compensation from the Organization, although he will be eligible to be reimbursed for out-of-pocket expenditures incurred on behalf of the Organization. The same restrictions will be placed on any member of Dr. Price's family or former employee of the Committee or official office(s), if any, who serve the Organization in any capacity. It is anticipated that, if approved by the Commission, Dr. Price, in his role as President and CEO, will have the authority to make staffing decisions, including hiring and firing as well as setting compensation for staff. The Organization's purpose will be to engage in research, education, presentations and publications with respect to health, budget, and other public policy matters. The Organization will not attempt to influence legislation nor participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office. It is anticipated that, if approved by the Commission, the Organization may promote and/or organize un-paid opportunities for Dr. Price

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to speak, write, publish, or otherwise make appearances to present the work of the Organization. The Organization would not promote or organize Dr. Price for any paid opportunities to speak, write, publish, or otherwise make paid appearances to present the work of the Organization.

Tax Status of the Organization

It is anticipated that the Organization will be registered as a social welfare non-profit organization pursuant to section 501(c)(4) of the Internal Revenue Service and will not attempt to influence legislation or participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office.

Assets of the Committee

As of the April 15, 2019 Quarterly FEC Report, the assets of the Committee totaled \$1,767,729.00. The Committee proposes to contribute some portion, but not all, of its total assets to the Organization to cover the costs associated with establishing and operating the Organization. It is contemplated that the Committee may also transfer funds to the Organization at a future time.

Proposed Restrictions Regarding Use of the Donation

Under the terms of the proposed contribution to the Organization, the funds contributed by the Committee will be subject to the following limitations, as previously approved by the Commission in Advisory Opinion 2012-05 (Lantos):

- (1) The donated funds and any income generated by those funds shall be placed in a separate account and shall not be co-mingled with other assets of the Organization.
- (2) Until such time as all donated Committee funds have been expended by the Organization, neither the donated funds nor any income generated by those funds shall be used to provide to, Dr. Price, any member of Dr. Price's family, any person who was employed by the Committee, or any person who was employed in Dr. Price's official office(s):
 - a. Compensation;
 - b. Gifts or grants; or
 - c. Any materials or reimbursement for any expense within the scope of 52 U.S.C. § 30114(b)(2)(A)-(I) or 11 CFR 113.1(g)(1)(i)(A)-(J).
- (3) Neither the donated funds nor any income generated by those funds shall be used to influence any election.

Legal Analysis

Contributions to a candidate or campaign committee may be used "for contributions to an organization described in section 170(c) of title 26." 52 U.S.C. § 30114(a)(3). A contribution or donation "shall not be converted by any person to personal use." 52 U.S.C. § 30114(b)(1). A contribution or donation is considered "converted to personal use" if the contribution is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the individual's campaign duties as a Federal officeholder. 52 U.S.C. § 30114(b)(2). Commission

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regulations provide that donations from campaign funds to § 170(c) organizations “are not personal use, unless the candidate receives compensation from the organization before that organization has expended the entire amount donated for purposes unrelated to his or her personal benefit.” 11 CFR § 113.1(g)(2). The Commission has previously interpreted this provision to allow a campaign committee to donate funds to a charitable organization even when the candidate was a member of the organization’s leadership, so long as none of the donated funds accrued to the candidate’s benefit. Advisory Opinion 1983-27 (McDaniel).

In several Advisory Opinions, the Commission has addressed whether a candidate committee’s contributions to an organization described in section 170(c) of title 26 would be permissible under the Act and Commission regulations. *See* Advisory Opinion 1983-27 (McDaniel) (an authorized committee may donate excess funds to an educational foundation partly because no donated funds would accrue to the candidate’s benefit; compensation does not include reimbursements for expenses ordinarily and necessarily incurred on behalf of such organization by the candidate); Advisory Opinion 1996-40 (Hancock) (an authorized committee may donate excess funds to a charitable organization where the candidate served as President and Chairman of the Board of the donee organization but pursuant to the by-laws of the donee organization was barred from being paid a salary or director fee); Advisory Opinion 2012-05 (Lantos) (an authorized committee may donate excess funds to a charitable organization where the candidate’s family members, campaign committee staff members, and congressional office staff members worked for the donee organization as paid staff members but the donation would be placed into a separate account which would not be used to provide compensation, gifts or grants, or any materials or reimbursements to any member of the candidate’s family, any person who was employed by the candidate’s committee, or any person who was employed in the candidate’s official office).

In this case, the Organization the Committee would like to contribute to has yet to formally establish and plans to establish in accordance with the Commission’s opinion. The Organization anticipates it will register as a social welfare non-profit organization pursuant to section 501(c)(4) of the Internal Revenue Service and will not attempt to influence legislation or participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office. All funds contributed by the Committee to the Organization will be placed into a segregated account, as described above and previously approved by the Commission in Advisory Opinion 2012-05 (Lantos).

The Committee seeks further clarification from the Commission on whether a contribution to the Organization would be permissible under the following circumstances:

1. May the Committee contribute to the Organization if, in his role as President and CEO of the Organization, Dr. Price has the authority to make staffing decisions including, but not limited to, hiring and firing as well as compensation decisions, so long as the Bylaws of the Organization prohibit Dr. Price, any member of his family, and any former employee of the Committee and Dr. Price’s official office(s) to receive compensation?

The Commission has previously allowed a campaign committee to donate funds to a charitable organization when the candidate was a member of the organization’s leadership, so long as none

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of the donated funds accrued to the candidate's benefit. Advisory Opinion 1983-27 (McDaniel). Additionally, the Commission has previously approved the contribution of campaign funds to a charitable organization where the candidate's family members, campaign committee staff members, and congressional office staff members worked for the donee organization as paid staff members but the donation would be placed into a separate account. Advisory Opinion 2012-05 (Lantos). Here, the By-Laws of the Organization will expressly prohibit Dr. Price from receiving compensation from the Organization and the contribution to the Organization will be placed into a separate account modeled after the one approved in Advisory Opinion 2012-05 (Lantos).

2. May the Committee contribute to the Organization if the Organization publishes research, presentations, or publications under Dr. Price's name?
3. May the Committee contribute to the Organization if the Organization promotes and/or organizes un-paid opportunities for Dr. Price to speak, write, publish, or otherwise make appearances to present the work of the Organization?

The Organization addresses both questions #2 and #3 together. The Commission has previously allowed a campaign committee to donate funds to a charitable organization where the candidate was member of the organization's leadership and the organization receiving the contribution planned to "award post-doctoral fellowships, conduct programs for college and high school students on topics related to national defense and foreign policy, and publish scholarly materials on foreign policy and national defense" and the candidate nor his family would be eligible for royalties or other special fees paid by the donee organization. Advisory Opinion 1983-27 (McDaniel). Here, the Organization plans to publish research, presentations, or other publications under Dr. Price's name in connection with his role as President and CEO of the Organization. Neither Dr. Price nor any member of his family will be eligible to receive any type of royalties or other special fees for such works. Additionally, the Organization may promote and/or organize un-paid opportunities for Dr. Price to speak, write, publish, or otherwise make appearances to present the work of the Organization in his role as President and CEO of the Organization. No paid opportunities will be organized or undertaken by the Organization on behalf of Dr. Price nor any member of his family.

4. May the Committee contribute to the Organization if the Organization reimburses Dr. Price for ordinary and necessary expenses incurred by Dr. Price directly connected to his role as President and CEO of the Organization?

Commission regulations provide that donations from campaign funds to § 170(c) organizations "are not personal use, unless the candidate receives compensation from the organization before that organization has expended the entire amount donated for purposes unrelated to his or her personal benefit." 11 CFR § 113.1(g)(2). The Commission has previously determined that compensation does not include reimbursements for expenses ordinarily and necessarily incurred on behalf of such organization by the candidate. 1983-27 (McDaniel), *cited in* Explanation and Justification for Final Rules on Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7869 (Feb. 9, 1995). The Organization contemplates reimbursing Dr. Price for ordinary and necessary

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expenses incurred by Dr. Price directly connected to his role as President and COE of the Organization.

Conclusion

For the above reasons, we respectfully request that the FEC advise the Committee that the proposed donation to the Organization, subject to the specific restrictions described above, and additional circumstances, would be permissible under the Act and Commission regulations.

If you have any questions or need additional information, please do not hesitate to contact us. Thank you for your consideration.

Sincerely,
ELECTIONS, LLC



Stefan Passantino
Nathan Groth