MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson
Acting General Counsel

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Subject: Draft AO 2022-01 (Joan Farr for U.S. Senate) – Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on March 9, 2022.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to https://www.fec.gov/legal-resources/advisory-opinions-process/.

Attachment
Dear Ms. Farr:

We are responding to your advisory opinion request on behalf of yourself and your principal campaign committees, Joan Farr for U.S. Senate OK and Joan Farr for U.S. Senate KS (“the Committees”),1 concerning whether the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations allow you or the Committees to provide copies of a book you have written and currently own as rewards to persons who make contributions to the Committees. The Commission concludes that the proposed activity is permissible because you may make unlimited expenditures from your personal funds, including making in-kind contributions of your assets to the Committees.

**Background**

The facts presented in this advisory opinion are based on your letter received via email on January 3, and your email received on January 12, 2022.

You are a candidate for the United States Senate from Oklahoma and from Kansas in the 2022 primary elections in those states. Advisory Opinion Request at

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AOR001. Joan Farr for U.S. Senate OK is your principal campaign committee for the Oklahoma primary election, and Joan Farr for U.S. Senate KS is your principal campaign committee for the Kansas primary election. Id. You are the author of a book entitled “TEN SECRETS You Must Know Before Hiring a Lawyer,” published in 2003 by the Association for Honest Attorneys (“the Association”), a nonprofit corporation that you created that same year. Id. The Association was dissolved in April 2019 and you assumed ownership of its assets, including the remaining copies of your book.\(^2\) Id.

You propose to give away copies of the book to contributors who make contributions over a certain amount to the Committees. Id. You will not sell or donate the books to the Committees, id. at AOR002-03, and you will not receive any proceeds or royalties from the distribution of the books. Id. at AOR001.

**Question Presented**

May you or the Committees distribute copies of your book to contributors as rewards for their contributions?\(^3\)

**Legal Analysis**

Yes, you and the Committees may distribute copies of your book to contributors as rewards for their contributions as proposed in the request because you may make

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\(^2\) In 2014, during your previous candidacy for the U.S. Senate, you submitted an advisory opinion request to the Commission regarding these same books. See Advisory Opinion 2014-10 (Farr). In that request, you asked whether your then-principal campaign committee could purchase the remaining copies of the book from the Association at a discounted price to be given as rewards to contributors. The Commission approved your request. However, as you have explained in the instant request, your 2014 campaign committee never purchased the books. AOR001.

\(^3\) The Commission is limiting its analysis and conclusion to the specific question presented.
unlimited expenditures from your personal funds, including making in-kind contributions
of your assets to the Committees.

A contribution includes “any gift, subscription, loan, advance, or deposit of
money or anything of value made by any person for the purpose of influencing any
election for Federal office.” 52 U.S.C. § 30101(8)(A)(i); see also 11 C.F.R. § 100.52(a).
Similarly, an expenditure includes “any purchase, payment, distribution, loan, advance,
deposit, or gift of money or anything of value, made by any person for the purpose of
influencing any election for Federal office.” 52 U.S.C. § 30101(9)(A)(i); see also 11
C.F.R. § 100.111(a). In both definitions, “anything of value” includes all in-kind
contributions, such as providing goods or services without charge or at less than the usual
and normal charge. 11 C.F.R. §§ 100.52(d)(1) (definition of contribution), 100.111(e)(1)
(definition of expenditure).

The Act prohibits individuals from making contributions, including in-kind
contributions, “to any candidate and his authorized political committees with respect to
any election for Federal office which, in the aggregate, exceed $2,000.” 52 U.S.C.
§ 30116(a)(1)(A); see also 11 C.F.R. § 110.1(b). However, Commission regulations
permit candidates for federal office to make unlimited expenditures from their personal
funds. 11 C.F.R. § 110.10. Personal funds include “[a]mounts derived from any asset
that, under applicable State law, at the time the individual became a candidate, the
candidate had legal right of access to or control over, and with respect to which the

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4 This amount is adjusted every two years for inflation. See 52 U.S.C. § 30116(c); 11 C.F.R.
§ 110.1(b)(1)(i). The current limitation for contributions from an individual to a candidate and the
candidate’s authorized committee is $2,900 per election. See https://www.fec.gov/help-candidates-and-
candidate had” either legal and rightful title or an equitable interest. 11 C.F.R. § 100.33(a).

Your proposal to distribute your books to your contributors would constitute an expenditure under the Act because the books would be distributed for the purpose of influencing your election to federal office. See Advisory Opinion 2001-08 (Specter) at 3 (distribution of candidate’s book to contributors “may be viewed as an expression of thanks for support of your past campaigns and an incentive to provide support to your next Senate campaign” and therefore would be for the purpose of influencing a federal election); Advisory Opinion 2011-02 (Brown) at 5 (distribution of candidate’s book to contributors and supporters would be for the purpose of influencing the candidate’s election).

Your expenditure would relieve the Committees of the expense that they would otherwise incur to obtain the books, thus the provision of the books without charge on behalf of the Committees would constitute an in-kind contribution to the Committees. See Advisory Opinion 2015-07 (Hillary for America) at 2-3; Advisory Opinion 2007-22 (Hurysz) at 6. However, the Commission concluded previously that, under 11 C.F.R. § 110.10, no contribution limits would apply to a candidate’s proposal to sell his self-published book to his campaign committee at a discount, which the campaign committee in turn intended to sell for fundraising purposes. Advisory Opinion 1995-24 (Palmer).

The Commission explained that “[s]ince the items the Committee will use for fundraising purposes are owned by [the candidate] . . . , [the candidate] may donate them to the Committee without being subject to the limits on contributions at [52 U.S.C. § 30116].” Advisory Opinion 1995-24 (Palmer) at 2; see also 11 C.F.R. § 100.111(e)(1) (stating that
an in-kind contribution, such as providing goods or services without charge or at less than
the usual and normal charge, is an expenditure). Similarly, here, the Committees will
receive a benefit from your distribution of the books without charge on behalf of the
Committees. However, because you may make unlimited expenditures from your
personal funds, including making in-kind contributions of your assets to the Committees,
you may give your copies of your book to the Committees or distribute them to
contributors directly without regard to the contribution limits at 52 U.S.C. § 30116.
11 C.F.R. § 110.10. Accordingly, the proposal to distribute the books to contributors as
described in the request is permissible.

The Committees must report the value of any of your books given to the
Committees or distributed by you directly to contributors, as in-kind contributions from
you to the Committees and as an expenditure by the Committees. 11 C.F.R. § 104.13(a);
see also Advisory Opinion 1990-09 (Mueller) at 3.

This response constitutes an advisory opinion concerning the application of the
Act and Commission regulations to the specific transaction or activity set forth in your
request. See 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change
in any of the facts or assumptions presented, and such facts or assumptions are material to
a conclusion presented in this advisory opinion, then the requestor may not rely on that
conclusion as support for its proposed activity. Any person involved in any specific
transaction or activity which is indistinguishable in all its material aspects from the
transaction or activity with respect to which this advisory opinion is rendered may rely on
this advisory opinion. See 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or
conclusions in this advisory opinion may be affected by subsequent developments in the
law including, but not limited to, statutes, regulations, advisory opinions, and case law.

Any advisory opinions cited herein are available on the Commission’s website.

On behalf of the Commission,

Allen J. Dickerson
Chairman