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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 22-05-A
AGENDA ITEM
For meeting of March 10, 2022

March 3, 2022

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*
Acting General Counsel

Neven F. Stipanovic *NFS*
Associate General Counsel

Robert Knop *RMK*
Assistant General Counsel

Joanna Waldstreicher *JSW*
Attorney

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

1 ADVISORY OPINION 2022-01

2

3 Joan E. Farr

4 Joan Farr for U.S. Senate OK

5 P.O. Box 140284

6 Broken Arrow, OK 74014

7

8 Joan Farr for U.S. Senate KS

9 P.O. Box 14

10 Derby, KS 67037

11

12 Dear Ms. Farr:

DRAFT A

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

22 ***Background***

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

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

¹ Joan Farr for U.S. Senate OK, Statement of Organization, FEC Form 1 (Aug. 27, 2021), <https://docquery.fec.gov/cgi-bin/forms/C00788034/1536435/>; Joan Farr for U.S. Senate KS, Statement of Organization, FEC Form 1 (Aug. 27, 2021), <https://docquery.fec.gov/cgi-bin/forms/C00788026/1536432/>.

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

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

12 ***Question Presented***

13 *May you or the Committees distribute copies of your book to contributors as*
14 *rewards for their contributions?*³

15 ***Legal Analysis***

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

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.

1 unlimited expenditures from your personal funds, including making in-kind contributions
2 of your assets to the Committees.

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

13 The Act prohibits individuals from making contributions, including in-kind
14 contributions, “to any candidate and his authorized political committees with respect to
15 any election for Federal office which, in the aggregate, exceed \$2,000.”⁴ 52 U.S.C.
16 § 30116(a)(1)(A); *see also* 11 C.F.R. § 110.1(b). However, Commission regulations
17 permit candidates for federal office to make unlimited expenditures from their personal
18 funds. 11 C.F.R. § 110.10. Personal funds include “[a]mounts derived from any asset
19 that, under applicable State law, at the time the individual became a candidate, the
20 candidate had legal right of access to or control over, and with respect to which the

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-committees/candidate-taking-receipts/contribution-limits/> (last accessed Jan. 14, 2022).

1 candidate had” either legal and rightful title or an equitable interest. 11 C.F.R.

2 § 100.33(a).

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

12 Your expenditure would relieve the Committees of the expense that they would
13 otherwise incur to obtain the books, thus the provision of the books without charge on
14 behalf of the Committees would constitute an in-kind contribution to the Committees.
15 *See* Advisory Opinion 2015-07 (Hillary for America) at 2-3; Advisory Opinion 2007-22
16 (Hurysz) at 6. However, the Commission concluded previously that, under 11 C.F.R.
17 § 110.10, no contribution limits would apply to a candidate’s proposal to sell his self-
18 published book to his campaign committee at a discount, which the campaign committee
19 in turn intended to sell for fundraising purposes. Advisory Opinion 1995-24 (Palmer).
20 The Commission explained that “[s]ince the items the Committee will use for fundraising
21 purposes are owned by [the candidate] . . . , [the candidate] may donate them to the
22 Committee without being subject to the limits on contributions at [52 U.S.C. § 30116].”
23 Advisory Opinion 1995-24 (Palmer) at 2; *see also* 11 C.F.R. § 100.111(e)(1) (stating that

1 an in-kind contribution, such as providing goods or services without charge or at less than
2 the usual and normal charge, is an expenditure). Similarly, here, the Committees will
3 receive a benefit from your distribution of the books without charge on behalf of the
4 Committees. However, because you may make unlimited expenditures from your
5 personal funds, including making in-kind contributions of your assets to the Committees,
6 you may give your copies of your book to the Committees or distribute them to
7 contributors directly without regard to the contribution limits at 52 U.S.C. § 30116.
8 11 C.F.R. § 110.10. Accordingly, the proposal to distribute the books to contributors as
9 described in the request is permissible.

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

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

1 law including, but not limited to, statutes, regulations, advisory opinions, and case law.

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

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On behalf of the Commission,

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Allen J. Dickerson

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Chairman