May 22, 2007

AGENDA ITEM
For Meeting of: 05-31-07

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan
General Counsel
Rosemary C. Smith
Associate General Counsel
Ron B. Katwan
Assistant General Counsel
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Attorney

Subject: Draft AO 2007-07

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 31, 2007.

Attachment
Dear Mr. Reiff:

We are responding to your advisory opinion request on behalf of Craig for U.S. Congress ("the Committee"), regarding whether, under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations, the Committee may amend its disclosure reports to report funds received from the candidate as loans rather than as contributions, and accept additional contributions to pay off these loans. The Commission concludes that the Committee may amend its reports and accept contributions to pay off the loans.

Background

The facts presented in this advisory opinion are based on your letter and accompanying affidavit received on April 4, 2007, and additional statements received on April 13, 2007.

James W. Craig was a candidate in the 2006 Democratic primary election for the House of Representatives seat from New Hampshire’s First Congressional District. The Committee was Mr. Craig’s principal campaign committee.

Mr. Craig provided personal funds to the Committee to retire campaign debt on two occasions: $17,000 on September 29, 2006, and $20,000 on October 24, 2006. The Committee reported these funds as contributions from the candidate. However, you have submitted an affidavit from the candidate, and a statement from the Committee’s
bookkeeper, indicating that the candidate intended the funds to be treated as loans to the Committee. You have also submitted a statement from the Committee’s outside compliance consultant, who was charged with preparing and filing the Committee’s disclosure reports, indicating that he was unaware of the candidate’s intent that the funds be treated as loans.

**Question Presented**

*May the Committee amend its disclosure reports to report the funds received from the candidate as loans rather than contributions, and then accept contributions to pay off these loans?*

**Legal Analysis and Conclusions**

Yes, the Committee may amend its disclosure reports to report the funds received from the candidate as loans rather than contributions, and then accept contributions to pay off these loans.

The Act provides six categories of permissible uses of contributions. *See* 2 U.S.C. 439a(a). Such uses are permitted provided that they do not result in campaign funds being converted to personal use by any person. 2 U.S.C. 439a(b)(1). “Personal use” occurs when a “contribution . . . is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.” 2 U.S.C. 439a(b)(2). Campaign funds may be used to repay a loan from a candidate, the proceeds of which were used in connection with his or her campaign, because such debt repayment is an authorized expenditure in connection with that candidate’s campaign for Federal office. *See* 2 U.S.C. 439a(a)(1) and Advisory Opinion 2003-30 (Fitzgerald). If the candidate loan is
in excess of $250,000, the amount in excess may not be repaid with proceeds from
contributions received after the date of the election in which the candidate was running.

See 2 U.S.C. 441a(j) and 11 CFR 116.12(a).

The Act further requires that the reports filed by a candidate’s principal campaign
committee disclose, among other transactions, all loans made by or guaranteed by the
candidate, as well as contributions from the candidate. 2 U.S.C. 434(b)(2)(B), (G) and
434(b)(8); see also 11 CFR 104.3(a)(4)(iv) and 104.3(d). Debts and obligations owed by
or to a political committee that remain outstanding shall be continuously reported until
extinguished. 11 CFR 104.11(a).

When determining the nature of a transaction between a candidate and the
candidate’s authorized committee, the Commission has taken into account not only the
way in which the transaction was reported, but also affidavits evidencing the intent of the
parties involved in the transactions. For example, in Advisory Opinion 2006-37 (Kissin),
the candidate had made two deposits of personal funds into his principal campaign
committee’s account. These deposits were reported as contributions from the candidate.

After the candidate lost the primary election and all debts had been extinguished, the
committee sought to reimburse the remaining funds to the candidate. Affidavits
submitted by the candidate, his campaign chairman, and his principal campaign
committee’s treasurer supported a determination that the deposits were in fact loans from
the candidate that were mistakenly reported as contributions. Accordingly, the
Commission determined that the committee’s remaining cash-on-hand, which was less
than the amount loaned, could be paid to the candidate as partial repayment for his loans
to the committee. See also Advisory Opinion 1997-21 (Firebaugh) (affidavits submitted
by candidate and her principal campaign committee’s treasurer stating that transactions 
with the candidate should have been reported as advances rather than in-kind 
contributions were sufficient to conclude that the transactions had been improperly 
reported, and that it was appropriate to amend the reports and refund the remaining cash-
on-hand to the candidate); Statement of Reasons-Final Repayment Determination of 
Buchanan for President, Inc. (Aug. 1, 1995) (affidavits submitted by a presidential 
primary candidate and the chairman of his principal campaign committee stating that 
receipts of candidate funds should have been reported as loans rather than contributions 
were sufficient to demonstrate the true nature of the transactions and allow repayment to 
the candidate).

Here, the affidavit of the candidate, Mr. Craig, and the statement of his principal 
campaign committee’s bookkeeper, support a determination that the candidate and the 
Committee intended the personal funds the candidate provided to the Committee to be 
loans. Further, the statement of the Committee’s outside compliance consultant presents 
no contrary information. Based on these documents, the Commission concludes that the 
personal funds provided by Mr. Craig were loans from him to the Committee that were 
mistakenly reported as contributions.

Because these funds were initially misreported, the Committee must amend its 
October 2006 Quarterly Report and all subsequent reports to reflect the debts owed by the 
Committee to the candidate. Furthermore, to the extent the loans by the candidate to the 
Committee remain unpaid, the Committee must either continue to report the obligations 
or report the candidate’s forgiveness of those obligations, as appropriate. The amended
reports should be filed within 30 days of the receipt of this advisory opinion. See Advisory Opinion 1997-21 (Firebaugh).

Further, because the Committee has outstanding debts to the candidate of less than $250,000, it may accept contributions made after the date of the election in order to retire the full amount of these debts. See 2 U.S.C. 441a(j); 11 CFR 110.1(b)(3)(iii) and 116.12(a). Contributions may be raised only in amounts sufficient to retire any remaining debt. See 11 CFR 110.1(b)(3)(iii)(B). Contributions made by individuals must be aggregated with any contributions they have previously made for the 2006 primary election to ensure that they do not exceed the contribution limits for that election. See 11 CFR 110.1(b)(1). The contribution limits applicable to any funds raised to retire debt are those that were in effect for the 2006 election cycle. See 11 CFR 110.1(b)(3)(iii)(C).

The Commission expresses no opinion regarding the application of Federal tax law to the proposed activities because that question is not within the Commission’s jurisdiction.

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 2 U.S.C. 437f. 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 requester may not rely on that

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1 For example, individuals may contribute up to $2,100.