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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 14-39
AGENDA ITEM
For meeting of August 14, 2014
SUBMITTED LATE

August 11, 2014

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by AN*
Deputy General Counsel

Adav Noti *AN*
Acting Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Joanna S. Waldstreicher *JSW*
Attorney

Subject: Draft AO 2014-10 (Farr)

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 5:00 pm (Eastern Time) on August 13, 2014.

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 <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2014-10

2

3 Joan Farr

4 Joan Farr for U.S. Senate

5 P.O. Box 998

6 Broken Arrow, OK 74013

7

8 Dear Ms. Farr:

DRAFT

9 We are responding to your advisory opinion request concerning the application of the
10 Federal Election Campaign Act, 2 U.S.C. §§ 431-457 (the “Act”), and Commission regulations
11 to your authorized campaign committee’s purchase and distribution of a book you authored. The
12 Commission concludes that the proposed activities are permissible under the Act and
13 Commission regulations.

14 ***Background***

15 The facts presented in this advisory opinion are based on your letter received on July 14,
16 2014.

17 You are a candidate for the U.S. Senate in Oklahoma, and your principal campaign
18 committee is Joan Farr for U.S. Senate (the “Committee”). In 2003 you wrote a book entitled
19 *Ten Secrets You Must Know Before Hiring a Lawyer*. Your book was published by the
20 Association for Honest Attorneys (the “Publisher”), a corporation holding tax-exempt status
21 under section 501(c)(3) of the Internal Revenue Code.

22 The Committee proposes to purchase all 200 remaining copies of your book from the
23 Publisher at a discounted price of \$5 per copy and to give away those copies to the Committee’s
24 contributors. The request provides that the \$5-per-copy price is the same price the Publisher
25 would charge any other purchaser of the same quantity of your book. You state that you will not
26 receive any direct or indirect royalties from the Publisher as a result of the Committee’s purchase
27 of the book.

1 ***Questions Presented***

2 1. *May the Committee use campaign funds to purchase copies of your book from the*
3 *Publisher at a standard, discounted bulk rate for subsequent distribution to the Committee’s*
4 *contributors?*

5 2. *Would the Committee’s purchase of your book from the Publisher at a discounted rate*
6 *that would be available to any other purchaser of the same quantity of the book result in an in-*
7 *kind contribution from the Publisher to the Committee?*

8 ***Legal Analysis and Conclusions***

9 1. *May the Committee use campaign funds to purchase copies of your book from the*
10 *Publisher at a standard, discounted bulk rate for subsequent distribution to the Committee’s*
11 *contributors?*

12 Yes, the Committee may use campaign funds to purchase copies of the book from the
13 Publisher at a standard, discounted bulk rate for distribution to contributors.

14 An authorized committee may spend its funds to finance activities “in connection with
15 the candidate’s campaign for federal office.” 2 U.S.C. § 439a(a)(1); *see also* 11 C.F.R. § 113.2
16 (stating that campaign funds may be used to “defray[] expenses in connection with a campaign
17 for federal office”). Such spending must not, however, result in the conversion of campaign
18 funds to the personal use of the candidate or any other person. 2 U.S.C. § 439a(b); 11 C.F.R.
19 §§ 113.1(g), 113.2(e). Campaign funds “shall be considered to be converted to personal use if
20 [the funds are] used to fulfill any commitment, obligation, or expense of a person that would
21 exist irrespective of the candidate’s election campaign or individual’s duties as a holder of
22 Federal office.” 2 U.S.C. § 439a(b)(2); *accord* 11 C.F.R. § 113.1(g). The Act and Commission
23 regulations provide a non-exhaustive list of uses of campaign funds that are *per se* personal use.

1 *See* 2 U.S.C. § 439a(b)(2); 11 C.F.R. § 113.1(g)(1)(i). For uses of campaign funds not on this
2 list, the Commission will determine on a case-by-case basis whether they constitute personal use.
3 11 C.F.R. § 113.1(g)(1)(ii). The purchase of a candidate's book is not one of the *per se* personal
4 uses listed in the Act and Commission regulations. *See* 2 U.S.C. § 439a(b)(2); 11 C.F.R.
5 § 113.1(g)(1)(i). Accordingly, the Commission determines on a case-by-case basis whether such
6 a purchase by a candidate's authorized committee is personal use. *See, e.g.*, Advisory Opinion
7 2014-06 (Ryan, *et al.*); Advisory Opinion 2011-02 (Brown); Advisory Opinion 2006-18
8 (Granger); Advisory Opinion 2004-18 (Lieberman); Advisory Opinion 2001-08 (Specter);
9 Advisory Opinion 1995-46 (D'Amato); Advisory Opinion 1993-20 (Nighthorse Campbell).

10 The facts presented in this request are particularly similar to those presented in Advisory
11 Opinions 2014-06 (Ryan), 2001-08 (Specter), and 2011-02 (Brown). In each of those advisory
12 opinions, the Commission determined that the authorized committee's use of campaign funds to
13 purchase copies of its candidate's book would defray an expense that would not exist irrespective
14 of the campaign, and therefore the spending would not be an impermissible personal use. In
15 reaching its conclusion in each of those advisory opinions, the Commission considered several
16 facts, including that the committee's funds would be used to purchase the book solely for
17 distribution to the committee's contributors and supporters — and thus would be used by the
18 committee only for the purpose of influencing its candidate's election to federal office — and
19 that the candidate would not receive any royalties attributable to the committee's purchase. *See*
20 Advisory Opinion 2014-06 (Ryan) at 5; Advisory Opinion 2011-02 (Brown) at 5-6; Advisory
21 Opinion 2001-08 (Specter) at 3.

22 Here, likewise, the Committee's funds will be used to purchase your book solely for
23 distribution to contributors and supporters. Thus, the Committee's expenditure to purchase the

1 books would be “in connection with” your election. *See* Advisory Opinion 2014-06 (Ryan) at 5
2 (quoting 2 U.S.C. § 439a(a)(1); 11 C.F.R. § 113.2(a)). You also “will not receive any royalties”
3 as a result of the Committee’s purchase of the book.¹ Accordingly, as in Advisory Opinions
4 2014-06 (Ryan), 2001-08 (Specter), and 2011-02 (Brown), the Committee’s proposed use of
5 campaign funds to purchase your book for distribution to the Committee’s contributors will
6 defray an expense that would not exist irrespective of your campaign. Consistent with those
7 advisory opinions, the Committee’s purchase of your book will not be an impermissible personal
8 use of campaign funds.

9 2. *Would the Committee’s purchase of your book from the Publisher at a discounted rate*
10 *that would be available to any other purchaser of the same quantity of the book result in an in-*
11 *kind contribution from the Publisher to the Committee?*

12 No, the Committee’s purchase of your book from the Publisher at a discounted rate that
13 would be available to any other purchaser of the same quantity of the book would not result in an
14 in-kind contribution from the Publisher to the Committee.

15 The term “contribution” includes “anything of value” given for the purpose of
16 influencing an election or given by a corporation to a political committee in connection with a

¹ The Commission notes that you are the founder and C.E.O. of the Publisher but have “never [been] able to take a salary as C.E.O. due to the lack of sufficient donations and sales of [your] book.” If the Publisher were to use the funds generated from your campaign’s purchase of your book to pay your salary as C.E.O., such payments could present a personal use issue. The Commission, however, understands your statement that you “will not receive any royalties generated by the committee’s purchase of the book” to mean that the Publisher will not pay you such royalties in any form, direct or indirect, including (1) as salary for your C.E.O. position, (2) to compensate you for back royalties arising from previous book sales, or (3) in payment of any other debt owed to you by the Publisher. In addition, the Commission has previously concluded that political committees may purchase goods and services from entities owned or controlled by their candidates or treasurers, so long as the committee pays the usual and normal charge for the goods or services; underpayment could result in an in-kind contribution to the committee, as discussed below, but overpayment could constitute conversion of campaign funds to personal use. *See, e.g.*, Advisory Opinion 1995-38 (Washington Policy Associates) (permitting company owned by committee treasurer to provide management and fundraising services to nonconnected committee); Advisory Opinion 1988-13 (Ray) (permitting candidate to rent office space to his principal campaign committee).

1 federal election. 2 U.S.C. §§ 431(8)(A)(i), 441b(b)(2); 11 C.F.R. §§ 100.52(a), 114.1(a).
2 “[A]nything of value” encompasses all in-kind contributions, including the provision of goods at
3 “less than the[ir] usual and normal charge,” meaning “the price of those goods in the market
4 from which they ordinarily would have been purchased at the time of” the transaction at issue.
5 11 C.F.R. § 100.52(d)(1)-(2). The sale of goods at a discount, however, does not result in a
6 contribution when the discount is made available in the ordinary course of business and on the
7 same terms and conditions available to the vendor’s other customers that are not political
8 organizations or committees. *See, e.g.*, Advisory Opinion 2014-06 (Ryan) at 6; Advisory
9 Opinion 2004-18 (Lieberman) at 3; Advisory Opinion 2001-08 (Specter) at 3; Advisory Opinion
10 1996-02 (CompuServe); Advisory Opinion 1995-46 (D’Amato) at 3.

11 As in Advisory Opinions 2014-06 (Ryan), 2004-18 (Lieberman), and 2001-08 (Specter),
12 the Committee will pay the Publisher a standard, discounted price that would be available to any
13 other person wishing to purchase the same quantity of the book from the Publisher. The
14 Committee’s payment of this standard, discounted rate will not result in a contribution from the
15 Publisher.

16 This response constitutes an advisory opinion concerning the application of the Act and
17 Commission regulations to the specific transaction or activity set forth in your request. *See* 2
18 U.S.C. § 437f. The Commission emphasizes that, if there is a change in any of the facts or
19 assumptions presented, and such facts or assumptions are material to a conclusion presented in
20 this advisory opinion, then the requestor may not rely on that conclusion as support for its
21 proposed activity. Any person involved in any specific transaction or activity which is
22 indistinguishable in all its material aspects from the transaction or activity with respect to which
23 this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C.

1 § 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
2 affected by subsequent developments in the law including, but not limited to, statutes,
3 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
4 on the Commission's website.

5 On behalf of the Commission,

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7
8 Lee E. Goodman
9 Chairman