

September 2, 1976

AO 1976-70

Jan Baran, Esquire
Legal Counsel
National Republican
Congressional Committee
512 House Office Building Annex
Washington, D.C. 20515

Dear Mr. Baran:

This responds to your recent letter of August 6, 1976, requesting an advisory opinion on two questions involving the permissibility of corporate compensation to an employee/candidate.

First, you ask whether a professional corporation may lawfully continue to provide its employee with personal benefits such as insurance if the individual is a candidate under 2 U.S.C. §431 and on leave from the firm.

Secondly, you ask whether the corporation may pay its employee/candidate a salary in the form of a paid leave of absence provided that such payments are used by the employee for purely personal expenses and to financially support himself and his family.

Since both these questions deal with the situation of a corporation giving something of value to a candidate, the applicable provisions of law are 2 U.S.C. §§431, 441b. Under the law, a corporation is prohibited from making a contribution to a candidate. A "contribution" means generally a "gift . . . advance . . . or anything of value made for the purpose of influencing" the nomination or election of any person to Federal office.¹ 2 U.S.C. SS 431(d). Moreover, contribution also includes "any direct or indirect payment, distribution . . . [or] advance . . . of money . . . to any candidate . . . in connection with . . ." and election to Federal office. See 2 U.S.C. §441b(b)(2).

The purpose of influencing, or the "connection" with, an election is apparent where, as in this case, the payments in the form of a paid leave of absence begin after the person has been a candidate and after he has been without a salary, except for some part-time work. As your request states, the corporation in question "has no policy with respect to paid leaves of absence" and now wishes to start with respect to this candidate. It appears that the payor proposes to grant a paid leave of absence so the candidate may

¹ Compare 2 U.S.C. §431(e)(4) which deals with the payment of compensation by one person for personal services of another that are rendered to a Federal candidate and characterizes such payments as contributions. This situation, although analogous, is different since the firm has a prior association with the candidate not to some third person who would campaign for the candidate.

have more time to campaign. Furthermore, the effect of receiving compensation from the firm will likely be that other funds of the candidate become available for campaign purposes.

If the candidate were receiving compensation in the form of earned or accrued leave, the Commission would not regard that as a contribution since, by analogy, no compensation is considered paid to an employee "where the time . . . is bona fide, although compensable, vacation time or other earned leave time." See §100.4(a)(5)(iii) of the proposed regulations.

The Commission is of the opinion that in this case, the proposed paid leave of absence is a contribution and thus prohibited since it is from a corporation. See 2 U.S.C. §441b. As for the other incidental benefits such as life and hospitalization insurance, absent a bona fide policy for employees on leave without pay, the Commission is of the opinion that the amount of the premiums paid for the insurance after the employee becomes a candidate and after he terminates his services for the corporation, will be considered a contribution. Compare §114.12(c) of the proposed regulations.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act to the specific factual situation set forth in your request. 2 U.S.C. §437f.

Sincerely yours,

(signed)
Vernon W. Thomson
Chairman for the
Federal Election Commission

Enclosures