



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 18, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-24

Robert Palmer, Ph.D.
1819 Newcastle Drive
Los Altos, CA 94024

Dear Dr. Palmer:

This refers to your letters dated May 30, June 15, and August 3, 1995, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to retirement of a debt owed to you by your principal campaign committee.

Your principal campaign committee for your 1990 primary and general election House campaign, Robert Palmer for Congress ("the Committee"), owes you over \$50,000 from loans reported as being made to the Committee. You note that the Committee has no cash on hand and, hence, it has no funds to pay for solicitations of contributions.

You have proposed a plan to retire the Committee's debt to you. In 1992, you self-published a book, and you presently store 2,630 copies in a warehouse in Mansfield, Ohio. You plan to sell these copies to the Committee at \$1.50 per book, which is the printing cost. The Committee would solicit contributions to retire your primary and general election campaign debt by providing a copy of the book in return for a contribution in the amount of the \$24.95 cover price, or a greater amount. When the debt is retired, you will file a termination report with the Commission.

You ask whether it would be permissible under the Act if you sold all 2,630 copies to the Committee in a bulk sale for \$1.50 per book. You also ask whether you may sell smaller quantities of the books to the Committee (for the same amount), as the books are needed by the Committee. Subject to the conditions set out below, the Commission concludes that you may sell the books to the Committee in either manner you propose.

The term "contribution" includes "anything of value" given for the purpose of influencing an election, such as in-kind contributions of goods or services. 11 CFR 100.7(a)(1) and (iii)(A). In-kind contributions include the difference between the usual and normal charge for goods or services and the amount charged the political committee. 11 CFR 100.7(a)(1)(iii)(A). "Usual and normal charge" means the price of those goods at that time in the market from which they ordinarily would have been purchased. 11 CFR 100.7(a)(1)(iii)(B).

Contributions by individuals to a candidate's authorized committee are limited to \$1,000 per election. 2 U.S.C. 441a(a)(1)(A). Commission regulations provide, however, that a candidate (other than one who receives public funding) may make unlimited expenditures from his personal funds, including contributions to his authorized committee to retire campaign debts. 11 CFR 110.10(a). Advisory Opinion 1984-60. Since the items the Committee will use for fundraising purposes are owned by you (the former candidate), you may donate them to the Committee without being subject to the limits on contributions at 2 U.S.C. 441a. See Advisory Opinion 1990-9.^{1/}

You propose selling the books to the Committee at a price equal to the printing costs. This will result in an in-kind contribution to the Committee from you in the amount of the difference between that price and the present market value of the books, assuming the latter amount is higher. (This latter price may vary depending on whether you sell all these items in bulk to the Committee or whether you sell them as needed.)^{2/}

The Act provides that the candidate and the campaign committee may not convert excess campaign funds to the personal use of the candidate or any other person. 2 U.S.C. 439a; 11 CFR 113.2(d). If the price that the Committee will pay to you is greater than the amount that the books would sell for in the market at the time of the sale to the Committee, then such excess payments would improperly augment the amount of funds you derive from the sale. See Advisory Opinions 1995-8 and 1994-8. This situation would amount to personal use of campaign funds, unless the excessive amount is deducted from the amount of the debt that the Committee owes to you.^{3/}

The Committee may sell the books to persons for any price it wishes in order to raise funds to pay campaign debts. The entire amount paid by a purchaser will be a contribution to the Committee. 11 CFR 100.7(a)(2). Such payments will be subject to the contribution limitations and may not be made in any amount by any person or entity that is covered by the prohibitions of the Act. 2 U.S.C. 441a, 441b, 441c, 441e, and 441f.

In soliciting purchases of the book, the Committee must inform the purchasers that they will be contributors under the Act. In addition, Committee solicitations for such a purchase that are made through direct mail, or other form of general public political advertising, should contain a proper disclaimer stating the Committee name and that the Committee paid for the solicitation. (4) 2 U.S.C. 441d(a)(1); 11 CFR 110.11(a)(1)(i). See Advisory Opinions 1992-24 and 1989-21.

Assuming you do not wish to become a candidate for the 1996 election cycle, you should instruct each purchaser (contributor) to indicate that each contribution is made for either the 1990 primary or general election debt, and they should so state on the contribution check. In the alternative, you may also provide each purchaser with a form which would be signed by the

contributor and would designate the contribution for the particular election. See 2 U.S.C. 431(2); 11 CFR 100.3(a) and 110.1(b)(2) and (4). See Advisory Opinion 1990-30. Contributions may be made with respect to a past election only to the extent that the contribution does not exceed net debts outstanding with respect to that election. See 11 CFR 110.1(b)(3)(i)-(iv).

Since the Committee has no cash on hand, the Commission assumes that you or someone else will pay for solicitation costs, including any solicitation mailings or advertisements and forms for contributor designations. Payment from your personal funds would be an in-kind contribution that may be made without limit. You also have the option of treating your payments as loans made by you to the Committee. Payment by others would be subject to the limits and prohibitions of the Act. The Commission also cautions that any arrangement with a vendor or other provider of services in connection with the solicitation must entail payment of the usual and normal charge and must be within the vendor's ordinary course of business. See footnote 1.

Finally, the Commission notes that the Committee's sale of all the books to donors would possibly generate contributions that exceed the amount the Committee owes to you. The Committee may not pay you any amount in excess of the Committee debt owed to you because such an overpayment would be a prohibited conversion of campaign funds to your personal use. See 2 U.S.C. 439a; 11 CFR 113.2(d). The amount the Committee may pay to you is the outstanding loan amount, plus the amount you charge the Committee for your books (in accordance with this opinion), and any solicitation costs you pay if you choose to treat them as a Committee debt.

The Commission expresses no opinion as to any tax ramifications of the proposed transactions, since those issues are outside its jurisdiction.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See U.S.C. 437f.

Sincerely,

(signed)

Danny L. McDonald
Chairman

Enclosures (AOs 1995-8, 1994-8, 1992-24, 1990-30, 1990-19, 1990-9, 1989-21, and 1984-60)

1 In determining whether an in-kind contribution results from the sale of items to a committee to be used for its fundraising, the Commission has also addressed whether such a sale is in the ordinary course of the vendor's business, e.g., whether certain terms of payment other than the price are made available to nonpolitical customers on an equal basis. See Advisory Opinion 1990-19. Since you are the owner of the items, this concern does not arise in connection with their sale to the Committee.

2 The amounts of any in-kind contributions made by you should be reported as contributions from you and as expenditures by the Committee. 11 CFR 104.13(a)(1) and (2).

Repayment by the Committee of amounts loaned by you should be reported as disbursements by the Committee and as reductions in the outstanding loan amount. 11 CFR 104.3(b)(2)(iii)(A), 104.3(b)(4)(iii), and 104.11.

3 It should be noted that the Commission has no knowledge of the market value of the books.

4 If other persons pay directly for the Committee's solicitations, the disclaimer needs to reflect that fact, and such persons would be making in-kind contributions to the Committee. 2 U.S.C. 441d(a)(2); 11 CFR 110.11(a)(1)(ii).