



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 19, 1979

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-22

Mr. Evan S. Dobelle, Chairman
Carter/Mondale Presidential Committee, Inc.
P.O. Box 500
Washington, D.C. 20044

Dear Mr. Dobelle:

This is in response to your letter of May 1, 1979, requesting an advisory opinion on behalf of the Carter/ Mondale Presidential Committee, Inc. ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to certain arrangements it has made for securing legal services.

You explain in your request that Mr. Timothy G. Smith is currently serving as Counsel to the Committee and is also employed as an associate of the law firm of Rogers & Wells ("the firm"). You state that, pursuant to a letter of understanding dated April 9, 1979, from the firm (a copy of which you enclosed as part of your request), Mr. Smith receives one-third of his overall compensation from the firm, in consideration of which he is required to devote at least twelve recordable hours per week to firm business.¹ This figure was arrived at by taking one-third of the minimum number of hours that an associate of the firm would ordinarily be expected to record per week. The remainder of Mr. Smith's compensation is paid by the Committee, where his duties involve primarily "FECA compliance and campaign public financing matters", although he does perform some "other legal and political duties" on behalf of the Committee.

You indicate that Mr. Smith has an office and a secretary at Committee headquarters where he is also assisted by a full-time legal assistant as well as a group of volunteer attorneys (Legal Advisory Committee) who provide legal research and advice to the Committee. You further indicate that Mr. Smith makes occasional use of firm resources (e.g. long distance

¹ The letter of understanding notes that the Committee is not presently a client of the firm, although the firm would consider representing the Committee as outside counsel on particular matters should the need arise in the future. Accordingly, the twelve hours per week which Mr. Smith devotes to firm business would not involve additional work for the Committee.

telephone, photocopying, secretarial assistance) in the course of performing his legal duties for the Committee and that the Committee reimburses the firm according to a fixed schedule of charges. Any similar expenses incurred by the firms of the volunteer attorneys who make up the Legal Advisory Committee are also reimbursed by the Committee. The agreed-upon schedule of charges is as follows:

Use of Conference Room	\$20.00 per meeting
Use of Secretarial Service- regular business hours and overtime	Actual cost, i.e. based on each secretary's individual rate
Local Fares - taxis, metro, etc.	Actual cost
Messenger (R&W)	\$3.30 per trip
Messenger (Commercial)	Actual cost
Xeroxing	\$.10 per page
Telephone - long distance calls	Actual cost
Postage	Actual cost

Also in this regard, the letter of understanding between Mr. Smith and the firm provides that, in accordance with the parties' understanding of Commission regulations, such occasional, isolated, or incidental work for the Committee performed by Mr. Smith at his office at the firm which does not involve any increase in the firm's operating or overhead costs, would not require additional reimbursement of a portion of such usual overhead costs by the Committee. Similarly, if Mr. Smith performs firm-related business on such a basis at his Committee office, the firm would not be required to reimburse the Committee.

The agreement between Mr. Smith and the firm provides that all arrangements and procedures will be reviewed periodically by the parties and, if necessary, adjustments will be made to reflect any significant variations in the respective work needs of the firm and the Committee.

You seek an advisory opinion as to whether any contribution, expenditure, or reporting obligation would arise out of the above-described arrangement.

With respect to Mr. Smith's services to the Committee involving "FECA compliance and campaign public financing matters", 2 U.S.C. Sections 431(e)(4) and (f)(4)(J) exclude from the definitions of "contribution" and "expenditure" the costs of legal and accounting services rendered to or on behalf of a candidate or political committee solely for the purpose of ensuring compliance with the Act or chapters 95 and 96 of the Internal Revenue Code of 1954. However, the exemption does not apply if the person paying for such services is not the candidate, committee, or other regular employer of the individual rendering the services. (See also 11 CFR 100.4(b)(12) and 100.7(b)(15)). Accordingly, amounts paid by the Committee to Mr. Smith, as well as to his secretary and legal assistant, which are compensation for services directed solely toward compliance with the Act and public financing provisions would not be subject to the expenditure limits set forth in 2 U.S.C. 441a(b). However, all amounts paid by the Committee to Mr. Smith and his support staff for such legal and accounting services are reportable in

accordance with 2 U.S.C. 434(b) and Part 104 of the Commission's regulations. (See 431(e)(4), (f)(4)(J) and 100.4(b)(12), 100.7(b)(15)).

With regard to Mr. Smith's performance of "other legal and political duties" on behalf of the Committee, the Commission concludes that the compensation schedule arrived at between Mr. Smith, the Committee and Rogers & Wells would not result in any in-kind contribution to the Committee as long as the schedule continues to accurately reflect the relative amounts of time that Mr. Smith devotes to his duties on behalf of the respective parties. This conclusion is based in part upon the understanding between Mr. Smith and the firm that the work/compensation arrangement will be re-evaluated periodically to ensure that it conforms to any significant variations in the needs of the Committee or the firm. Moreover, any amounts paid by the Committee to Mr. Smith, or his support staff, which are compensation for such "other legal and political duties" not rendered for compliance purposes are reportable "expenditures" under the Act, subject to the Committee's overall 441a(b) expenditure limitations.

The reimbursement schedule to be followed with regard to the occasional use of firm resources by Mr. Smith in the course of performing his Committee duties appears to be reasonable. The Commission concludes, therefore, that adherence to the schedule would not result in the making of in-kind contributions by the partners in the firm to the Committee. (See 11 CFR 110.1(e)). As you are aware, the Commission's regulations define "contribution" as including goods, facilities, personnel or services which are provided without charge or at a charge which is below the usual and normal charge for the items. (See 11 CFR 100.4(a)(1)(iii)). The Commission assumes without deciding that the rates set forth in your request represent the usual and normal charges for the items listed - that is, the amounts that the Committee would pay for such items in the market from which they ordinarily would be purchased (See 11 CFR 100.4(a)(1)(iii)(B)). This means, for example, that \$20 for the use of a firm conference room for a meeting would be adjusted upward should the conference room be used for longer than would reasonably be expected for any other firm meeting, or that the "actual cost" to be paid for secretarial service would include not only the secretary's individual salary rate but also a reasonable portion of any amounts paid by the firm for "fringe benefits", or that the \$3.30 per trip to be paid for the use of a firm messenger represents the salary cost of the messenger for brief, local trips and would be adjusted for any costs incurred for taxis, metro, etc. The Commission agrees with the understanding between Mr. Smith and the firm that the occasional, isolated, or incidental use of firm resources which does not involve any increase in the firm's usual overhead costs would not require additional reimbursement by the Committee of any portion of such overhead expenses.² Amounts paid by the Committee as reimbursement for the occasional use of firm resources would, in general, be reportable "expenditure" subject to the Committee's 441a(b) overall expenditure limitations. However, if such use was incidental to Mr. Smith's services rendered solely for the purpose of ensuring compliance with the Act or public financing provisions, the amounts paid would not be subject to limit under 441a(b) but would still be reportable pursuant to 434(b) and Part 104 of the Commission's regulations.

² Although Rogers and Wells is not an incorporated entity, 114.9 of the Commission's regulation, which deals with the use of corporate facilities, would appear to be applicable by analogy since it seems clear from the reimbursement schedule set forth in your request and the attached letter of understanding between Mr. Smith and the firm that the use of firm facilities is not intended to result in any in-kind contribution from any of the firm's partners to the Committee. (See also 11 CFR 110.1(e)).

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

Sincerely yours,

(signed)

Robert O. Tiernan
Chairman for the
Federal Election Commission