



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 20, 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2004-26

Jan Witold Baran, Esq.
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006

Dear Mr. Baran:

This responds to your letter, dated July 7, 2004, requesting an advisory opinion on behalf of Representative Gerald C. Weller and his fiancée, Zury Rios Sosa, concerning the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to the participation of a foreign national in the activities of two affiliated campaign committees and a nonconnected multicandidate committee on a volunteer basis.

Background

Representative Weller is a Member of the United States House of Representatives and is currently a candidate for re-election. Representative Weller maintains two affiliated campaign committees – Jerry Weller for Congress, Inc. and Gerald C ‘Jerry’ Weller for Congress – and is the honorary chair of Reform PAC, a nonconnected multicandidate committee (collectively, the “Committees”). On July 6, 2004, Representative Weller became engaged to be married to Ms. Rios Sosa, who is a member of the Guatemalan legislature.¹ Ms. Rios Sosa is not a citizen of the United States and does not have permanent resident status in the United States. You state that Ms. Rios Sosa plans to remain a citizen of Guatemala and does not intend to apply for United States citizenship or for admission for permanent residence.

¹ According to a press release published on Representative Weller’s website, he and Ms. Rios Sosa plan to marry after the upcoming November election. *See* <http://weller.house.gov/News/DocumentSingle.aspx?DocumentID=4510> (visited on July 26, 2004).

Question Presented

May Ms. Rios Sosa participate in the activities of the Committees, including decision-making, on a volunteer basis? Specifically, may Ms. Rios Sosa (1) attend Committee events; (2) participate in Committee events by speaking or by soliciting funds and support for the Committees; (3) participate in meetings with Representative Weller and Committee personnel regarding Committee events or political strategy; and (4) accompany Representative Weller to the fundraising and campaign events of other political committees, provided she has not made a contribution of her personal funds in order to attend?

Legal Analysis and Conclusions

Your request raises two separate legal issues. First, would Ms. Rios Sosa's proposed activities result in a prohibited foreign national contribution to the Committees, under 2 U.S.C. 441e(a)(1)(A), or, in the alternative, would they come within an exception for "volunteer activities"? Second, would Ms. Rios Sosa's proposed activities constitute participation by a foreign national in the decision-making of the Committees, which is prohibited by 11 CFR 110.20(i)?

I. Foreign National Volunteer Activity

The Act and Commission regulations prohibit foreign nationals, directly or indirectly, from making a "contribution or donation of money or other thing of value . . . in connection with a Federal, State, or local election." 2 U.S.C. 441e(a)(1)(A). *See also* 11 CFR 110.20(b). However, the Act and Commission regulations also provide that "[t]he term 'contribution' does not include the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee." 2 U.S.C. 431(8)(B)(i). *See also* 11 CFR 100.74.

In Advisory Opinion 1987-25, the Commission addressed the issue of whether uncompensated volunteer services provided by a foreign national constituted a prohibited contribution. The Commission concluded that a foreign student's work for a campaign without compensation would not result in a contribution because the value of the uncompensated volunteer services was specifically exempt from the Act's definition of contribution.² Similarly, the Commission concludes that Ms. Rios Sosa's performance of the proposed campaign-related activities you describe for the Committees without compensation would constitute exempt volunteer activity. Thus, these proposed volunteer activities would not result in the making or receipt of a prohibited contribution under the Act.

² Compare Advisory Opinion 1987-25 with Advisory Opinion 1981-51 (concluding that the Act prohibited an artist who was a foreign national from donating his uncompensated services as an artist to create an original work of art for a political committee's use in fundraising).

2. *Foreign National Participation in Decision-Making*

Commission regulations implementing 2 U.S.C. 441e prohibit foreign nationals from participating in the decisions of any person involving election-related activities. *See* 11 CFR 110.20(i). Such participation in decisions includes directing, dictating, controlling, or directly or indirectly participating “in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person’s Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for any Federal, State, or local office or decisions concerning the administration of a political committee.” *Id.* This broad prohibition encompasses foreign national involvement in the management of any political committee, and its decisions regarding its receipts and disbursements in connection with Federal and non-Federal elections. *Explanation and Justification for Regulations on Contribution Limitations and Prohibitions*, 67 Fed. Reg. 69946 (Nov. 19, 2002). Therefore, Ms. Rios Sosa must not participate in Congressman Weller’s decisions regarding his campaign activities. She must also refrain from managing or participating in the decisions of the Committees.

With regard to the four types of activities about which you inquire, the Commission concludes that Ms. Rios Sosa may, as an uncompensated volunteer, take part in these Committee activities as long as she does not participate in the Committees’ decision-making processes. First, the Commission concludes that Ms. Rios Sosa may attend Committee events, such as campaign rallies, debates, other public appearances, and fundraisers. Second, as an uncompensated volunteer, she may solicit funds from persons who are not foreign nationals. As an uncompensated volunteer, Ms. Rios Sosa may also give speeches at Committee events. Third, Ms. Rios Sosa may attend meetings with Representative Weller and Committee personnel regarding Committee events or political strategy. She may not, however, be involved in the management of the Committees.

Finally, Ms. Rios Sosa may accompany Representative Weller and attend fundraising and campaign events of other political committees, provided she does not make a contribution of her personal funds in order to attend. However, her participation in such events is subject to the same limitations detailed above that govern her participation in events of the Committees.

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 requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

Bradley A. Smith
Chairman

Enclosures (AOs 1987-25 and 1981-51)