



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 26, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2006-37

Barry J.C. Kissin
Kissin for Congress
148 West Patrick Street
Frederick, MD 21701

Dear Mr. Kissin:

We are responding to your advisory opinion request on behalf of yourself and your principal campaign committee, Kissin for Congress (“the Committee”), concerning the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to the Committee’s reimbursement to you of a portion of the funds you provided the Committee during the course of your campaign. The Commission concludes that the Committee may disburse these funds to you.

Background

The facts presented in this advisory opinion are based on your letter and accompanying affidavits received on December 1, 2006.

You were a candidate in the 2006 Democratic primary election for the House of Representatives seat from Maryland’s Sixth Congressional District. This was your first candidacy for election to political office at any level.

On March 3, 2006, you deposited \$5,000 of your personal funds into the Committee’s campaign depository. On March 21, 2006, you deposited an additional \$20,000 of your personal funds into the Committee’s campaign depository.¹ The Committee reported each of these deposits as contributions from you. However, you

¹ The \$25,000 was deposited via checks drawn on your personal checking account. These deposits do not represent bank loans, brokerage loans, or lines of credit under applicable statutory provisions. See 2 U.S.C. 431(8)(B)(vii) and (xiv).

have submitted affidavits from yourself and the Committee's chairman, each dated November 27, 2006, indicating that you intended to be reimbursed for the \$25,000 total of both deposits to the extent funds were available after all Committee expenses were paid. You have also submitted an affidavit from the Committee's treasurer, also dated November 27, 2006, indicating that you intended to be reimbursed with respect to the \$20,000 deposit, and this affidavit does not address the \$5,000 deposit. The Committee's 2006 Year-End Report shows its current cash on hand is \$15,230.34 and that it has no outstanding debts or obligations.

Question Presented

May your principal campaign committee disburse \$15,230.34 to you as a partial reimbursement of funds you provided to the Committee that the Committee reported as contributions?

Legal Analysis and Conclusions

Yes, your principal campaign committee may disburse \$15,230.34 to you because such disbursement would constitute a repayment of a loan from you to the Committee.

The Act provides six categories of permissible uses of contributions. *See* 2 U.S.C. 439a(a). Such uses are permitted provided that they do not result in campaign funds being converted to personal use by any person. 2 U.S.C. 439a(b)(1). "Personal use" occurs when a "contribution . . . is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office." 2 U.S.C. 439a(b)(2). Campaign funds may be used to repay a loan from a candidate, the proceeds of which were used in connection with his or her campaign, because such debt repayment is an authorized expenditure in connection with that candidate's campaign for Federal office.² *See* 2 U.S.C. 439a(a)(1); Advisory Opinion 2003-30 (Fitzgerald).

The Act further requires that the reports filed by a candidate's principal campaign committee disclose, among other transactions, all loans made by or guaranteed by the candidate, as well as contributions from the candidate. 2 U.S.C. 434(b)(2)(B), (G) and 434(b)(8); *see also* 11 CFR 104.3(a)(4)(iv) and 104.3(d). Debts and obligations owed by or to a political committee that remain outstanding shall be continuously reported until extinguished. 11 CFR 104.11(a).

When determining the nature of a transaction between a candidate and the candidate's authorized committee, the Commission has taken into account not only the way in which the transaction was reported, but also affidavits evidencing the intent of the parties involved in the transactions. For example, in Advisory Opinion 1997-21 (Firebaugh), the candidate had forgiven advances of personal funds so that the committee

² If the candidate loan is in excess of \$250,000, the amount in excess may not be repaid with proceeds from contributions received after the date of the election in which the candidate was running. *See* 2 U.S.C. 441a(j).

could terminate. The committee reported this forgiveness as an “in-kind contribution.” Subsequently, the committee received an unanticipated refund of \$46,131 from a media vendor. The committee sought the Commission’s permission to reimburse the candidate the amount of the refund to repay a portion of the previous advances. The candidate and the committee’s treasurer both submitted affidavits stating that the transactions should have been reported as advances, rather than in-kind contributions. The Commission accepted the affidavits as proof that the transactions should have been reported as advances, and it allowed the refund to be made by the committee to the candidate. *See also Statement of Reasons-Final Repayment Determination of Buchanan for President, Inc.* (Aug. 1, 1995) (affidavits submitted by a presidential primary candidate and the chairman of his principal campaign committee stating that receipts of candidate funds should have been reported as loans rather than contributions were sufficient to demonstrate the true nature of the transactions and allow repayment to the candidate).

The affidavits by you, your campaign chairman and the Committee’s treasurer support a determination that you and the Committee intended that \$20,000 of the personal funds you deposited into the Committee’s account would be reimbursed to you if feasible. Further, the affidavits from you and your campaign chairman support a determination that the additional \$5,000 of the personal funds you deposited into the Committee’s account would be reimbursed to you if feasible, and the affidavit of the Committee’s treasurer presents no contrary information. Based on these affidavits, the Commission concludes that both the \$20,000 and \$5,000 deposits were loans from you to the Committee that were mistakenly reported as contributions. Accordingly, the Commission determines that the \$15,230.34 remaining in the Committee’s accounts (or any other Committee funds up to a total of \$25,000) may be paid to you as partial repayment for your loans to the Committee.

In addition, the Committee must amend its April 2006 Quarterly Report and all subsequent reports to reflect the debts owed by the Committee to you, and the Committee should reference this Advisory Opinion in a memo entry. Furthermore, to the extent the loans by you to the Committee remain unpaid, the Committee must either continue to report the obligations or report your forgiveness of those obligations, as appropriate. *See* 11 CFR 104.11(a). The amended reports should be filed within 30 days of the receipt of this opinion. *See* Advisory Opinion 1997-21 (Firebaugh).

The Commission expresses no opinion regarding the application of Federal tax law to the proposed activities because that question is not within the Commission’s jurisdiction.

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)

Robert D. Lenhard
Chairman

Enclosures (Advisory Opinions 2003-30 and 1997-21)