



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 4, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-05

Donald F. McGahn II, Esq.
McGahn & Associates PLLC
509 7th Street, N.W.
Washington, D.C. 20004

Dear Mr. McGahn:

We are responding to your advisory opinion request on behalf of Erik Iverson, regarding whether, under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations, Mr. Iverson may solicit, direct, and spend non-Federal funds on behalf of the Montana Republican State Central Committee ("the State Committee"), while continuing his current employment as Chief of Staff to U.S. Representative Dennis Rehberg.

The Commission concludes that Mr. Iverson may solicit, direct and spend non-Federal funds as Chairman of the State Committee, while continuing to serve as Chief of Staff to Congressman Rehberg. He must, however, refrain from soliciting, directing, or spending non-Federal funds as an agent of the Congressman.

Background

The facts presented in this advisory opinion are based on your letter received on February 14, 2007, and your e-mail received on March 8, 2007.

Mr. Iverson currently serves as the Chief of Staff to Congressman Dennis Rehberg of Montana. As Chief of Staff, Mr. Iverson manages the day-to-day affairs of Congressman Rehberg's Washington, D.C., office and his four district offices in Montana. His responsibilities include the Congressman's schedule, personnel matters, and the offices' budgets.

Although Mr. Iverson has occasionally attended campaign events on his own time, he is not, and never has been, employed by Congressman Rehberg's principal campaign committee, Rehberg for Congress, nor has he raised or spent campaign funds for Congressman Rehberg. Rehberg for Congress employs a professional fundraising consultant, who handles the committee's fundraising, and the committee's treasurer controls its spending. Additionally, Rehberg for Congress is managed by a professional campaign manager. You suggest, however, that Mr. Iverson might "carry out some fundraising activity on behalf of Congressman Rehberg" at some point in the future "in an un-official, personal capacity."

Mr. Iverson has been active in Montana politics for several years and intends to run for election to the position of Chairman of the State Committee, which is the State committee of the Republican Party for the State of Montana. The State Committee maintains both a Federal and a non-Federal account, and it solicits and accepts donations into its non-Federal account that are prohibited by the Act and Commission regulations, including donations in unlimited amounts from individuals.¹ The State Committee makes donations and disbursements from its non-Federal account to support State and local Republican candidates in Montana.

If elected Chairman of the State Committee, Mr. Iverson's official responsibilities as Chairman would include representing the State Committee, managing its personnel, presiding over its meetings, appointing its committees, serving as an *ex-officio* member of all of its committees, and discharging the "usual powers of supervision and management" of a chairman. Mr. Iverson's actions as Chairman of the State Committee would be undertaken exclusively on behalf of the State Committee, and not on behalf of Congressman Rehberg or the Rehberg campaign.

Questions Presented

1. *May Mr. Iverson solicit, direct, and spend non-Federal funds as the Chairman of the State Committee while he continues to serve in his current position as Chief of Staff to Congressman Rehberg?*
2. *May Mr. Iverson solicit, direct, and spend non-Federal funds as the Chairman of the State Committee if he becomes a fundraising agent of Congressman Rehberg?*

Legal Analysis and Conclusions

1. *May Mr. Iverson solicit, direct, and spend non-Federal funds as the Chairman of the State Committee while he continues to serve in his current position as Chief of Staff to Congressman Rehberg?*

¹ See Commissioner of Political Practices, Accounting and Reporting Manual for Political Committees, 14 (2005), available at <http://politicalpractices.mt.gov/5campaignfinance/politicalcomminfo.asp> (last visited Apr. 20, 2007). See also Mont. Code Ann. 13-35-227 (prohibiting corporate contributions) and 13-37-216 (2005) (limiting contributions to candidates).

Yes, Mr. Iverson may solicit, direct, and spend non-Federal funds as Chairman of the State Committee while continuing to serve as Chief of Staff to Congressman Rehberg.

The Act prohibits Federal candidates, officeholders² and their agents from soliciting, receiving, directing, transferring or spending funds in connection with an election for non-federal office, if those funds exceed the contribution limitations in 2 U.S.C. 441a(a) or come from prohibited sources such as foreign nationals. *See* 2 U.S.C. 441i(e)(1)(B); 11 CFR 300.62. Agents of Federal candidates and officeholders are prohibited from engaging in these activities when “acting on behalf of a Federal candidate or individual holding Federal office.” 11 CFR 300.60(c). The Commission has defined an “agent” of a Federal candidate or officeholder to be “any person who has actual authority, either express or implied,” “to solicit, receive, direct, transfer, or spend funds in connection with any election.” 11 CFR 300.2(b)(3). An agent’s actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent’s authority to act on the principal’s behalf.³

The Commission concludes that Mr. Iverson is not currently an agent of Congressman Rehberg for purposes of 2 U.S.C. 441i(e). As Chief of Staff, Mr. Iverson’s responsibilities pertain only to the official duties of the Congressman, while campaign finance responsibilities are confined to the Congressman’s principal campaign committee, Rehberg for Congress. You have represented that Mr. Iverson has received no express instruction from Congressman Rehberg that he is the Congressman’s agent for fundraising purposes, nor has the Congressman’s conduct caused Mr. Iverson to believe that he is the Congressman’s agent for such purposes. Accordingly, Mr. Iverson’s role as Chief of Staff does not include actual authority, express or implied, to raise or spend campaign funds, and he is not an agent of Congressman Rehberg under 11 CFR 300.2(b)(3). Consequently, Mr. Iverson’s actions as Chairman of the State Committee do not implicate 2 U.S.C. 441i(e)(1)(B) or 11 CFR 300.62, and he may solicit, direct, or spend non-Federal funds as Chairman of the State Committee, while continuing to serve as Congressman Rehberg’s Chief of Staff.

2. *May Mr. Iverson solicit, direct, and spend non-Federal funds as the Chairman of the State Committee if he becomes a fundraising agent of Congressman Rehberg?*

Yes, Mr. Iverson may continue to solicit, direct, and spend non-Federal funds as the Chairman of the State Committee, even if he becomes a fundraising agent of Congressman Rehberg.

² Congressman Rehberg holds “Federal office” as defined in 2 U.S.C. 431(3) and 11 CFR 100.4. *See also* 11 CFR 300.2(o).

³ *See* Definitions of “Agent” for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures Revised Explanation and Justification, 71 Fed. Reg. 4975, 4976 (Jan. 31, 2006) [“Definition of ‘Agent’ Revised Explanation and Justification”] (citing Restatement (Second) of Agency, sec. 7 (1958)).

If Congressman Rehberg provides Mr. Iverson with actual authority to solicit and receive contributions, then Mr. Iverson would be an agent of a Federal candidate and officeholder under 11 CFR 300.2(b)(3). Mr. Iverson would be required, therefore, to refrain from soliciting, directing, or spending non-Federal funds when acting on behalf of the Congressman. *See* 2 U.S.C. 441i(e)(1); 11 CFR 300.60(c), 300.61 and 300.62.⁴

Mr. Iverson's status as Congressman Rehberg's agent would not, however, necessarily preclude him from also serving as Chairman of the State Committee. *See* 11 CFR 300.60(c). The Commission has explained that the purpose of the requirement that an agent act on behalf of an officeholder or candidate to be subject to the Act's prohibitions in 2 U.S.C. 441i(e)(1) was "to preserve an individual's ability to raise funds for multiple organizations." Definition of "Agent" Revised Explanation and Justification, 71 Fed. Reg. at 4979 n.9. While the Act restricts the ability of Federal officeholders, candidates, and national party committees to raise non-Federal funds, it "does not prohibit individuals who are agents of the foregoing from also raising non-Federal funds for other political parties or outside groups." *Id.* at 4979.

The Commission addressed a similar question in Advisory Opinion 2003-10 (Reid). In that Advisory Opinion, Rory Reid, a Commissioner of Clark County, Nevada, asked if he was prohibited from raising non-Federal funds for a State party committee, given that (1) he was the son of a Federal candidate and officeholder, Senator Harry Reid of Nevada; (2) he was previously an agent of his father for raising contributions; and (3) he was contemplating raising contributions for his father in the future. The Commission concluded that Commissioner Reid could raise non-Federal funds for the State party committee, "as long as [he] solicits non-federal funds in his own capacity . . . and exclusively on behalf of the State Party, and not on the authority of any Federal candidate or officeholder, including Senator Reid." *See* Advisory Opinion 2003-10 (Reid).

Consistent with its conclusion in Advisory Opinion 2003-10, the Commission concludes that Mr. Iverson, as Chairman of the State Committee, may continue to solicit, direct, and spend non-Federal funds on behalf of the State Committee, even if he becomes an agent of Congressman Rehberg for fundraising purposes, as long as Mr. Iverson solicits non-federal funds in his own capacity and exclusively on behalf of the State Committee, and not on the authority of any Federal candidate or officeholder, including Congressman Rehberg.

The Commission expresses no opinion regarding the application of the rules of the House of Representatives to the proposed activities because those questions are not within the Commission's jurisdiction.

⁴ As an employee and potential agent of Congressman Rehberg, the Commission also directs Mr. Iverson's attention to 11 CFR 109.21(d)(5) and 109.37(a)(3).

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. The advisory opinion cited herein may be found on the Commission's website at www.fec.gov.

Sincerely,

(signed)

Robert D. Lenhard
Chairman