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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 13-40
AGENDA ITEM
For meeting of September 12, 2013
SUBMITTED LATE

September 10, 2013

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by AN*
Deputy General Counsel

Adav Noti *AN*
Acting Associate General Counsel

Amy Rothstein *AR*
Assistant General Counsel

Joanna S. Waldstreicher *JSW*
Attorney

Subject: Draft AO 2013-14 (Long)

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 9:00 am (Eastern Time) on September 12, 2013.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2013-14

2

3 Mr. Martin Long
4 Martin Long for Congress
5 30 Mill Street, Suite 204
6 Arlington, MA 02476

DRAFT

7

8 Dear Mr. Long:

9 We are responding to your advisory opinion request concerning the application of
10 the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission
11 regulations to your campaign committee’s proposed reference in campaign materials to a
12 book that you wrote. The Commission concludes that the proposal is consistent with the
13 Act and Commission regulations because the reference to the book is *de minimis*.

14 ***Background***

15 The facts presented in this advisory opinion are based on your letter dated August
16 26, 2013, supplementary materials that you submitted to the Commission on August 30,
17 and your telephone conversation with Commission attorneys on August 30.

18 You are a candidate for the U.S. House of Representatives for Massachusetts’s
19 Fifth Congressional District in a special primary election to be held on October 15, 2013.
20 Martin Long for Congress (the “Committee”) is your principal campaign committee.

21 You have self-published a book on “gridlock in [C]ongress,” an issue that you
22 describe as central to your campaign. You will receive royalties on any sales of the book
23 and do not plan to donate the royalties to charity. Your campaign website refers to the
24 book and includes links to a website where it can be purchased.

25 You propose to refer to the book in printed campaign materials that will be paid
26 for and authorized by the Committee. The Committee will generally distribute these
27 materials, referred to as “palm cards,” at campaign events, leave them on doors, and give

1 them to people on the street. The copy of the proposed palm card that was submitted
2 with your advisory opinion request has text on both sides and measures approximately
3 four inches wide and nine inches long per side. The content of the card consists of
4 approximately twenty bullet points and text boxes that provide your biographical and
5 contact information and summarize your position on various issues. The proposed
6 reference to your book is one of these text boxes: It appears on one side of the palm card
7 and occupies approximately four square inches. It consists of a small image of the book's
8 cover, with accompanying text stating, "For more on the gridlock issue, read Martin's
9 book," followed by the title of the book. You state that the Committee might also
10 distribute additional printed materials containing substantially similar references to your
11 book.

12 ***Questions Presented***

13 *1. Is the proposed reference to the book on the palm card consistent with the Act*
14 *and Commission regulations?*

15 *2. Is a reference to the book on any other printed materials distributed by the*
16 *Committee consistent with the Act and Commission regulations?*

17 ***Conclusion and Legal Analysis***

18 *1. Is the proposed reference to the book on the palm card consistent with the Act*
19 *and Commission regulations?*

20 Yes, the Commission concludes that the proposed reference to the book on the
21 palm card is consistent with the Act and Commission regulations because it is *de*
22 *minimis*.

1 The Act identifies six categories of permissible uses of contributions accepted by
2 a federal candidate. 2 U.S.C. § 439a(a); *see also* 11 C.F.R. Part 113. These permissible
3 uses of campaign funds include paying “for otherwise authorized expenditures in
4 connection with the campaign for Federal office of the candidate,” as well as “any other
5 lawful purpose,” but not conversion to “personal use.” 2 U.S.C. § 439a(a)(1), (a)(6), (b);
6 *see also* 11 C.F.R. § 113.2(a), (e). Conversion to personal use occurs when funds in a
7 campaign account are used “to fulfill any commitment, obligation or expense . . . that
8 would exist irrespective of the candidate’s election campaign[.]” 2 U.S.C. § 439a(b)(2);
9 *see also* 11 C.F.R. § 113.1(g).¹

10 The Commission has previously determined that “expenses associated with
11 marketing a book that a commercial publisher has published and for which it pays
12 royalties to the author are expenses that exist irrespective of the candidate’s election
13 campaign.” Advisory Opinion 2006-07 (Hayworth) at 3. As such, using campaign funds
14 to market such a book generally constitutes prohibited personal use under 2 U.S.C.
15 § 439a(b)(2) and 11 C.F.R. § 113.1(g). Advisory Opinion 2006-07 (Hayworth); *see also*
16 Advisory Opinion 2006-18 (Granger); Advisory Opinion 2008-17 (KITPAC); Advisory
17 Opinion 2011-02 (Brown) at 6.

18 The Commission has also determined, however, that spending campaign funds to
19 pay for material that includes text promoting sales of a candidate’s book is permissible if
20 the portion of the material devoted to such promotion is *de minimis*. *See* Advisory
21 Opinion 2006-07 (Hayworth). In Advisory Opinion 2006-07 (Hayworth), a candidate’s

¹ The Act and Commission regulations also identify certain spending that constitutes *per se* personal use. 2 U.S.C. § 439a(b)(2); 11 C.F.R. § 113.1(g)(1)(i). None of those enumerated items is at issue here.

1 principal campaign committee proposed to add to its website a statement that would
2 either (a) urge readers to “keep an eye on this space for upcoming information on [the
3 candidate’s] book signings” and state where they could buy the candidate’s book; or (b)
4 urge readers to order an autographed copy of the candidate’s book by contributing a
5 stated amount to the committee or by clicking a link to order directly from an online
6 bookseller. *Id.* at 2. The Commission concluded that neither proposed use of the
7 committee’s website to promote the candidate’s book was a prohibited personal use of
8 campaign funds because it was “limited to the addition of a *de minimis* amount of
9 material to an otherwise substantial website” that included a brief biography of the
10 candidate, discussion of various issues, endorsements, news archives, and schedules of
11 upcoming campaign events. *Id.* at 3.

12 The Commission has further delineated this *de minimis* exception in subsequent
13 advisory opinions. In Advisory Opinion 2006-18 (Granger), the Commission concluded
14 that the *de minimis* exception did not apply to expenses incurred to promote a candidate’s
15 book on her campaign committee’s website in light of the committee’s acknowledgement
16 “that the costs associated with the promotional materials on the website would be more
17 than a *de minimis* amount.” Advisory Opinion 2006-18 (Granger) at 2 (noting expenses
18 associated with using “paid Committee personnel” to promote book on website and at
19 events). Similarly, in Advisory Opinion 2011-02 (Brown), a candidate proposed to
20 include promotional material about his autobiography on the homepage of his principal
21 campaign committee’s website, on the committee’s Twitter feed, and on its webpages on
22 social media websites. The Commission noted that Advisory Opinion 2006-07

1 (Hayworth) had found to be *de minimis* “the addition of a single sentence, or, at most,
2 two sentences of promotional material about a candidate’s book to an authorized
3 committee’s substantial website.” Advisory Opinion 2011-02 (Brown) at 7. Applying
4 that analysis to determine whether the Brown committee’s proposed use was *de minimis*,
5 the Commission considered the percentage of the committee’s homepage and social
6 media sites that would be used to promote the candidate’s book. The Commission
7 concluded that the proposed use of up to 25 percent of the committee’s homepage and
8 between 10 and 25 percent of its postings on social media sites was not *de minimis*.

9 Here, as in each of the foregoing advisory opinions, you would incur expenses
10 associated with marketing your book irrespective of your election campaign. Thus, your
11 proposed use of the Committee’s assets to urge the public to read your book is a
12 prohibited personal use unless it is *de minimis*.²

13 You propose to include a single sentence promoting your book (“For more on the
14 Gridlock issue, read Martin’s book”), the title of the book, and a small image of its cover
15 on a card that otherwise contains significant information about your campaign, including
16 biographical details, issue discussion, and exhortations to vote for you on October 15.
17 This “addition of a single sentence . . . of promotional material about a candidate’s book”
18 incurs no meaningful production or staff expenses beyond those necessarily entailed in
19 generating the flier or website in the first place. *See* Advisory Opinion 2011-02 (Brown)
20 at 7 (discussing Advisory Opinion 2006-07 (Hayworth)). Moreover, the proposed text
21 and image constitute a small portion of the card: They represent only one of

² A reference to your book also appears in the biographical information about you on the other side of the card. That reference – unlike the one that is the subject of this advisory opinion – does not exhort the public to acquire or read the book.

1 approximately 20 bullet points and text boxes, and approximately four of 72 square
2 inches of the card as a whole. Given the absence of additional printing or staff expenses
3 incurred by including the promotional statement on the card, the significant amount of
4 information otherwise appearing on the card, and the relatively small percentage of the
5 card that would be used to promote the book, the Commission concludes that the
6 proposed inclusion of promotional material on the card is not a prohibited personal use of
7 campaign funds because it is *de minimis*.

8 2. *Is a reference to the book on any other printed materials distributed by the*
9 *Committee consistent with the Act and Commission regulations?*

10 The Commission is unable to determine whether a “reference” to your book on
11 printed materials besides those submitted with your request would be a prohibited
12 personal use of campaign funds. As discussed above, using campaign funds to promote
13 such a book generally constitutes prohibited personal use under 2 U.S.C. § 439a(b)(2)
14 and 11 C.F.R. § 113.1(g). But without additional information about the proposed
15 references or the printed materials in question, the Commission cannot conduct the fact-
16 specific inquiry necessary to determine whether the references would promote your book
17 and whether the *de minimis* exception would apply. *Cf.* 11 C.F.R. § 112.1(b) (providing
18 that requests “posing a hypothetical situation . . . do not qualify as advisory opinion
19 requests”).

20 This response constitutes an advisory opinion concerning the application of the
21 Act and Commission regulations to the specific transaction or activity set forth in your
22 request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in

1 any of the facts or assumptions presented, and such facts or assumptions are material to a
2 conclusion presented in this advisory opinion, then the requestor may not rely on that
3 conclusion as support for his proposed activity. Any person involved in any specific
4 transaction or activity which is indistinguishable in all its material aspects from the
5 transaction or activity with respect to which this advisory opinion is rendered may rely on
6 this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note that the analysis or
7 conclusions in this advisory opinion may be affected by subsequent developments in the
8 law including, but not limited to, statutes, regulations, advisory opinions, and case law.
9 The cited advisory opinions are available from the Commission's Advisory Opinion
10 searchable database at <http://www.fec.gov/searchao>.

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On behalf of the Commission,

Ellen L. Weintraub
Chair