



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

July 24, 2014

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2014-06

Timothy E. Kronquist, Esq.  
Michael Bayes, Esq.  
Holtzman Vogel Josefiak PLLC  
45 North Hill Drive  
Suite 100  
Warrenton, VA 20186

Dear Messrs. Kronquist and Bayes:

We are responding to your advisory opinion request on behalf of Representative Paul Ryan, Ryan for Congress, Inc., and Prosperity Action, Inc., concerning the application of the Federal Election Campaign Act, 2 U.S.C. §§ 431-57 (the “Act”), and Commission regulations to the publication, promotion, purchase, and distribution of a book authored by Representative Ryan. The Commission concludes that the requestors may engage in the proposed activities in accordance with the requirements described below.

***Background***

The facts presented in this advisory opinion are based on your letter received on June 30, 2014.

Representative Ryan is a member of the U.S. House of Representatives representing the First Congressional District of Wisconsin, and he is a candidate for re-election to the House of Representatives. Ryan for Congress is Representative Ryan’s principal campaign committee. Prosperity Action is a leadership PAC sponsored by Representative Ryan.

In August 2014, Grand Central Publishing (the “Publisher”), a division of the international publishing company Hachette Book Group, will publish a book authored by Representative Ryan entitled *The Way Forward*. The book will address “the state of the conservative movement in America today, discuss how it contrasts with liberal progressivism, and explain what must be done to save what Representative Ryan refers to as the ‘American Idea.’” Advisory Opinion Request at 2 (June 30, 2014) (“AOR”). The Publisher will promote

and market the book through a variety of events in which Representative Ryan will participate, including a promotional bus tour to various cities around the country, book signings, media appearances on national and local television and radio shows, and interviews with print and online media. Although the bus tour will not travel through or stop in Wisconsin, some of the television and radio appearances and print and online media interviews will likely be available within media markets covering Representative Ryan's district. The Publisher intends to pay all costs associated with obtaining and operating the tour bus.

Representative Ryan's agreement with the Publisher provides for the payment to Representative Ryan of royalties based on what the request describes as an industry-standard percentage of net sales revenue. The request states that there will be no advance payment of royalties to Representative Ryan, in accordance with Rule 25 of the Rules of the House of Representatives. The request also states that all costs incurred by the Publisher in connection with the promotional bus tour will be in accordance with the agreement and the Rules of the House of Representatives, which require that such activities be conducted on the same or equal terms as are made available to other authors who are not Members of Congress.

Ryan for Congress and Prosperity Action each propose to purchase copies of the book to be distributed solely to their respective supporters and contributors. Both Ryan for Congress and Prosperity Action would purchase the book in bulk directly from the Publisher at the standard discounted bulk rate the Publisher offers, under normal industry practice, to other large purchasers. Neither Ryan for Congress nor Prosperity Action will purchase more books than the number needed to fulfill the purpose of distribution to each entity's supporters and contributors. The Publisher will be instructed to exclude all associated royalties from the bulk purchases by both entities from the royalty calculation, and the Publisher will donate any royalties generated by these purchases directly to a section 501(c)(3) charitable organization that is not in any way associated with Representative Ryan or his family.

Representative Ryan and Ryan for Congress wish to advertise and market the sale of the book in various ways. Ryan for Congress plans to promote the book on its website, which is updated daily. Any references or information related to the Representative's book on this website would be limited to one to two sentences in length — including hyperlinks directing readers to the Publisher's website or to an online book seller (such as Amazon.com) — except that Ryan for Congress would like to include on its website longer references to the book if the Act and Commission regulations so permit. Ryan for Congress states that the cost of placing the promotional material on its website would be *de minimis*. Ryan for Congress also plans to promote the book through information and hyperlinks distributed via its social media pages, including Twitter and Facebook. References or information related to the book on social media would include information regarding buying the book or attending book tour events and appearances, and similar promotional content.

Prosperity Action also wishes to advertise and market the sale of the book on its website and social media pages. Such references to the Representative's book would provide basic information about it and give details regarding purchasing the book or attending book tour events and appearances, and similar promotional content.

As part of its fundraising appeals and other efforts to advocate Representative Ryan's re-election, Ryan for Congress plans to send to its existing email lists emails that reference the Representative's book. Prosperity Action likewise plans to send to its existing email lists emails that reference the book for fundraising purposes and in the context of other election-related activities for the purpose of influencing one or more elections for federal office.

Representative Ryan intends to use personal funds to purchase or rent email and mailing lists maintained by both Ryan for Congress and Prosperity Action. Representative Ryan intends to use these lists to promote his book, such as by sending emails announcing its publication. Representative Ryan will enter into separate list rental agreements with Ryan for Congress and Prosperity Action. Each agreement will provide for Representative Ryan to pay the fair market value for renting the lists, as determined by an independent list appraisal. The request further states that the list rental agreements will comply with the requirements set forth in Advisory Opinion 2002-14 (Libertarian National Committee).

### ***Questions Presented***

- 1a. May Ryan for Congress use campaign funds to purchase copies of The Way Forward directly from the Publisher, at the standard discounted bulk rate, for subsequent distribution to Ryan for Congress supporters and for other campaign-related activities?*
- 1b. Does Ryan for Congress's purchase of books from the Publisher at the standard, discounted bulk rate result in an in-kind contribution from the Publisher to Ryan for Congress?*
- 2a. May Prosperity Action use committee funds to purchase copies of The Way Forward directly from the Publisher, at the standard discounted bulk rate, for subsequent distribution to Prosperity Action supporters and for other election-related activities?*
- 2b. Does Prosperity Action's purchase of books from the Publisher at the standard, discounted bulk rate result in an in-kind contribution from the Publisher to Prosperity Action?*
- 3. May Ryan for Congress place material promoting The Way Forward on its website and social media pages so long as the cost of doing so is de minimis?*
- 4. May Prosperity Action place one to two sentences of material promoting The Way Forward on its website and also post a de minimis amount of material promoting Congressman Ryan's book on its social media sites?*
- 5. May Representative Ryan use the Ryan for Congress and Prosperity Action email and mailing lists to promote the sale of The Way Forward if Representative Ryan reimburses each committee for the lists' fair market value based on an independent list appraisal?*
- 6. Are the Publisher's costs and expenses for the publication of Representative Ryan's book covered by the media exemption?*

7. *Is the Publisher's payment of costs incurred in connection with the promotion of Representative Ryan's book, including a bus tour, covered by the media exemption?*

8. *Are the Publisher's costs and expenses for the publication and promotion of Representative Ryan's book exempt from the Act's regulation because they are bona fide commercial activity?*

### ***Legal Analysis and Conclusions***

*1a. May Ryan for Congress use campaign funds to purchase copies of The Way Forward directly from the Publisher, at the standard discounted bulk rate, for subsequent distribution to Ryan for Congress supporters and for other campaign-related activities?*

Yes, Ryan for Congress may use campaign funds to purchase copies of the book from the Publisher at the standard discounted bulk rate for distribution to supporters and for other campaign-related activities.

Under the Act and Commission regulations, an authorized committee may spend its funds to finance activities "in connection with the candidate's campaign for federal office." 2 U.S.C. § 439a(a)(1); 11 C.F.R. § 113.2(a) (providing that campaign funds may be used to "defray[ ] expenses in connection with a campaign for federal office"). Such spending must not, however, result in the conversion of campaign funds to the personal use of the candidate or any other person. 2 U.S.C. § 439a(b); 11 C.F.R. §§ 113.1(g), 113.2(e).

The Act provides that campaign funds "shall be considered to be converted to personal use if [the funds are] 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); *see also* 11 C.F.R. § 113.1(g). The Act and Commission regulations provide a non-exhaustive list of uses of campaign funds that are *per se* personal use. 2 U.S.C. § 439a(b)(2); 11 C.F.R. § 113.1(g)(1)(i). For uses of campaign funds not on this list, the Commission determines, on a case-by-case basis, whether they constitute personal use. 11 C.F.R. § 113.1(g)(1)(ii).

The purchase of a candidate's book is not one of the *per se* personal uses listed in the Act and Commission regulations. *See* 2 U.S.C. § 439a(b)(2); 11 C.F.R. § 113.1(g)(1)(i). Accordingly, the Commission determines on a case-by-case basis whether such a purchase by an authorized committee is personal use. *See, e.g.*, Advisory Opinion 2011-02 (Brown); Advisory Opinion 2006-18 (Granger); Advisory Opinion 2004-18 (Lieberman); Advisory Opinion 2001-08 (Specter); Advisory Opinion 1995-46 (D'Amato); Advisory Opinion 1993-20 (Nighthorse Campbell).

The facts presented in this request are particularly similar to those presented in Advisory Opinion 2001-08 (Specter) and Advisory Opinion 2011-02 (Brown). In each of those advisory opinions, the Commission determined that the authorized committee's use of campaign funds to purchase copies of its candidate's book would defray an expense that would not exist irrespective of the campaign, and therefore the spending would not be an impermissible personal use. The

Commission's conclusion in each of those advisory opinions was based on several facts: the authorized committee's funds would be used to purchase the book solely for distribution to the committee's contributors and supporters, and thus would be used by the committee only for the purpose of influencing its candidate's election to federal office; the quantity purchased would not exceed the number needed for this described purpose; all royalties attributable to the committee's purchase would be paid by the publisher to charity; and the committee's purchase would be excluded by the publisher from the royalty calculation. Advisory Opinion 2011-02 (Brown) at 5-6; Advisory Opinion 2001-08 (Specter) at 3.

Similarly here, Ryan for Congress's funds would be used to purchase the book solely for distribution to contributors and supporters, and the quantity purchased would not exceed the number needed for such distribution. Thus the purchased books would be used by Ryan for Congress only "in connection with" Representative Ryan's election. *See* 2 U.S.C. § 439a(a)(1); 11 C.F.R. § 113.2(a).

The requestors' proposal is also consistent with the Commission's prior conclusions regarding a candidate's book royalties. The Commission concluded in Advisory Opinion 2001-08 (Specter) and Advisory Opinion 2011-02 (Brown) that no personal use results if the publisher (1) donates the candidate's royalties for his campaign's book purchases to a charitable organization that is not associated with the candidate and (2) excludes such sales from the calculation of royalties that accrue to the candidate. These are precisely the terms of the agreement proposed between Representative Ryan and the Publisher here. Consistent with prior Commission advice, the Publisher's direct contribution to charity of royalties from Ryan for Congress's purchase of the book will not result in conversion of campaign funds to Representative Ryan's personal use.<sup>1</sup>

Accordingly, as in Advisory Opinion 2001-08 (Specter) and Advisory Opinion 2011-02 (Brown), the Commission concludes that Ryan for Congress's proposed use of campaign funds to purchase Representative Ryan's book for distribution to contributors and supporters will defray an expense that would not exist irrespective of his campaign and will not be an impermissible personal use of campaign funds, so long as all royalties for Ryan for Congress's purchase are paid by the Publisher directly to charity and are not included in the calculation of any royalties due to Representative Ryan.

*Ib. Does Ryan for Congress's purchase of books from the Publisher at the standard, discounted bulk rate result in an in-kind contribution from the Publisher to Ryan for Congress?*

No, Ryan for Congress's purchase of books from the Publisher at the standard, discounted bulk rate does not result in an in-kind contribution from the Publisher to Ryan for Congress.

The term "contribution" includes "anything of value" given for the purpose of influencing an election or given by a corporation to a political committee in connection with a

---

<sup>1</sup> Representative Ryan "must also not receive any personal benefit, tangible or intangible, for the royalties the Publisher donates to charity for the sales of the book to [his campaign committee]." Advisory Opinion 2011-02 (Brown) at 6.

federal election. 2 U.S.C. §§ 431(8)(A)(i), 441b(b)(2); 11 C.F.R. §§ 100.7(a)(1), 114.1(a)(1). “Anything of value” includes providing goods or services at less than the usual and normal charge. 11 C.F.R. § 100.7(a)(1)(iii)(A). The “usual and normal charge” for goods is the price of those goods in the market from which they ordinarily would have been purchased at the time of the transaction at issue. 11 C.F.R. § 100.7(a)(1)(iii)(B). The sale of goods or services at a discount does not result in a contribution when the discount is made available in the ordinary course of business and on the same terms and conditions to the vendor’s other customers that are not political organizations or committees. *See, e.g.*, Advisory Opinion 2004-18 (Lieberman) at 3; Advisory Opinion 2001-08 (Specter) at 3; Advisory Opinion 1996-02 (CompuServe); Advisory Opinion 1995-46 (D’Amato) at 3.

As in Advisory Opinion 2004-18 (Lieberman) and Advisory Opinion 2001-08 (Specter), Ryan for Congress indicates that the bulk rate it will pay is a standard, discounted price that the Publisher, under normal industry practice, makes available on equal terms to other bulk purchasers that are not political organizations or committees. Accordingly, the Commission concludes that Ryan for Congress’s payment of the standard, discounted bulk rate will not result in a contribution from the Publisher.

*2a. May Prosperity Action use committee funds to purchase copies of The Way Forward directly from the Publisher, at the standard discounted bulk rate, for subsequent distribution to Prosperity Action supporters and for other election-related activities?*

The Commission concludes that, under the circumstances described in the request, the conduct proposed in Question 2a is not in violation of the Act or Commission regulations. The Commission could not agree as to the legal basis for that conclusion by the required four affirmative votes. 2 U.S.C. § 437c(c); 11 C.F.R. § 112.4(a).

*2b. Does Prosperity Action’s purchase of books from the Publisher at the standard, discounted bulk rate result in an in-kind contribution from the Publisher to Prosperity Action?*

No, Prosperity Action’s purchase of books from the Publisher at the standard, discounted bulk rate does not result in an in-kind contribution from the Publisher to Prosperity Action.

As discussed above with respect to Ryan for Congress’s purchase of books at the discounted bulk rate, the sale of goods or services at a discount does not result in a contribution when the discount is made available in the ordinary course of business and on the same terms and conditions to the vendor’s other customers that are not political organizations or committees. As in Advisory Opinion 2004-18 (Lieberman) and Advisory Opinion 2001-08 (Specter), Prosperity Action indicates that the bulk rate it will pay is a standard, discounted price that the Publisher, under normal industry practice, makes available on equal terms to other purchasers that are not political organizations or committees. Accordingly, the Commission concludes that Prosperity Action’s payment of the standard, discounted bulk rate will not result in a contribution from the Publisher.

*3. May Ryan for Congress place material promoting The Way Forward on its website and social media pages so long as the cost of doing so is de minimis?*

Yes, Ryan for Congress may post a *de minimis* amount of material promoting the book on its website and social media pages at a *de minimis* cost.

The Act provides that an unlawful conversion of campaign funds to personal use occurs when such funds are “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); *see also* 11 C.F.R. § 113.1(g). The Commission has previously determined that the expenses associated with marketing a book that a commercial publisher publishes and for which it pays royalties to the candidate are expenses that would exist irrespective of the candidate’s election campaign or duties as a federal officeholder. *See* Advisory Opinion 2011-02 (Brown) at 6; Advisory Opinion 2006-07 (Hayworth) at 3; Advisory Opinion 2006-18 (Granger) at 3. Therefore, the use of an authorized committee’s asset, such as its website, to promote the candidate’s book would ordinarily constitute a prohibited personal use. *See* Advisory Opinion 2011-02 (Brown) at 6; Advisory Opinion 2006-07 (Hayworth) at 3; Advisory Opinion 2006-18 (Granger) at 3.

However, the Commission also previously has concluded that the addition of a small amount of promotional material about a candidate’s book to an authorized committee’s website or social media pages does not constitute a prohibited personal use of campaign funds, provided that both the amount of promotional material and the cost to the committee are *de minimis*. *See* Advisory Opinion 2011-02 (Brown) at 7; Advisory Opinion 2006-07 (Hayworth) at 3. In one instance, the Commission concluded that a proposal to post promotional material comprising up to 25 percent of the authorized committee’s website’s homepage, 25 percent of the committee’s Facebook page, 10 percent of the committee’s Twitter page, and 25 percent of the candidate’s LinkedIn page did not appear to represent a *de minimis* amount of material. Advisory Opinion 2011-02 (Brown) at 7. In another instance, the Commission concluded that the addition of one or two sentences of promotional material about a candidate’s book to an authorized committee’s substantial website was *de minimis*. Advisory Opinion 2006-07 (Hayworth) at 3.

Here, Ryan for Congress proposes to promote the book on its website, limiting references to the book to one or two sentences that include hyperlinks to additional information on the Publisher’s website or to online booksellers. Ryan for Congress states that the cost of adding this material to the committee’s website would be *de minimis*. The committee also proposes to promote the book through similar brief references and hyperlinks on its social media pages, which, the request notes, are generally free to use.<sup>2</sup> The Commission concludes that the amount of such material promoting the book is *de minimis* and Ryan for Congress may place them on its website and social media pages, so long as the cost of doing so is *de minimis*.

---

<sup>2</sup> Paid advertising can be purchased on Facebook and Twitter, but such advertising “is not contemplated here.” AOR at 9.

4. *May Prosperity Action place one to two sentences of material promoting The Way Forward on its website and also post a de minimis amount of material promoting Congressman Ryan's book on its social media sites?*

The Commission concludes that Prosperity Action can post such limited material at *de minimis* cost on its website and on social media sites. The Commission could not agree by the necessary four votes whether Prosperity Action can place more promotional content on its website and social media sites at more than *de minimis* cost because the Commission could not agree as to the legal basis for that conclusion, with three Commissioners holding the position that the Act's personal use prohibition does not apply to leadership PACs.

5. *May Representative Ryan use the Ryan for Congress and Prosperity Action email and mailing lists to promote the sale of The Way Forward if Representative Ryan reimburses each committee for the lists' fair market value based on an independent list appraisal?*

Yes, Representative Ryan may use the Ryan for Congress and Prosperity Action email and mailing lists to promote the sale of *The Way Forward* if Representative Ryan reimburses each committee for its lists' fair market value.

The Commission has long recognized that a political committee's mailing lists are assets that have value and that are frequently sold, rented, or exchanged in a market. *See, e.g.*, Advisory Opinion 2011-02 (Brown) at 7-8; Advisory Opinion 2002-14 (Libertarian National Committee) at 4-5; Advisory Opinion 1982-41 (Dellums) at 2; Advisory Opinion 1981-46 (Dellums) at 2. Thus, as to Representative Ryan's rental of Ryan for Congress's mailing lists, the relevant question is whether the Representative's rental constitutes personal use of the Committee's asset. Commission regulations provide that "the transfer of a campaign committee asset is not personal use so long as the transfer is for fair market value." 11 C.F.R. § 113.1(g)(3). Accordingly, Representative Ryan's proposal to rent his campaign committee's mailing lists for their fair market value, as determined by an independent list broker, is permissible.

11 C.F.R. § 113.1(g)(6) provides that third-party defrayals of a candidate's expenses that would otherwise constitute personal use are contributions to that candidate. By providing its mailing list to Representative Ryan for purposes of marketing his book, Prosperity Action would defray some of his personal marketing expenses, and therefore section 113.1(g)(6) is potentially implicated here. The Commission has determined, however, that no contribution results when a political committee leases its mailing list, provided that: (1) the mailing list has an ascertainable fair market value; (2) the political committee leases the mailing list at the usual and normal charge in a *bona fide*, arm's-length transaction; and (3) the list is used in a commercially reasonable manner consistent with such arm's-length agreement. Advisory Opinion 2002-14 (Libertarian National Committee) at 4. Representative Ryan proposes to enter into a list rental agreement with Prosperity Action that will comply with the requirements of Advisory Opinion 2002-14 (Libertarian National Committee), including payment of fair market value for the lists. Therefore, Representative Ryan's rental of Prosperity Action's mailing lists will not result in a contribution by Prosperity Action to Representative Ryan under 11 C.F.R. § 113.1(g)(6).<sup>3</sup>

---

<sup>3</sup> The rental payments at fair market value also will not constitute contributions from Representative Ryan to

6. *Are the Publisher's costs and expenses for the publication of Representative Ryan's book covered by the media exemption?*

7. *Is the Publisher's payment of costs incurred in connection with the promotion of Representative Ryan's book, including a bus tour, covered by the media exemption?*

8. *Are the Publisher's costs and expenses for the publication and promotion of Representative Ryan's book exempt from the Act's regulation because they are bona fide commercial activity?*

Yes, the Publisher's costs and expenses for the publication and promotion of Representative Ryan's book are not subject to the Act's regulation because they are *bona fide* commercial activity.

The Act and Commission regulations limit the term "contribution" to "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person *for the purpose of influencing any election for Federal office.*" 2 U.S.C. § 431(8)(A)(i) (emphasis added); *see also* 11 C.F.R. § 100.52. For corporations, "the term 'contribution or expenditure' also includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate . . . *in connection with any election.*" 2 U.S.C. § 441b(b)(2) (emphasis added). A corporation's *bona fide* commercial activity is neither "for the purpose of influencing any election for federal office" nor "in connection with any election" and thus is not a contribution or otherwise subject to regulation under the Act. *See, e.g.,* First Gen. Counsel's Rpt. at 13-17, MUR 5474 and 5539 (Dog Eat Dog Films, Inc.) (May 25, 2005) ("Dog Eat Dog"); Advisory Opinion 1994-30 (Conservative Concepts/Pence) at 3-7; Advisory Opinion 1989-21 (Create-a-Craft) at 4. In determining whether activity is *bona fide* commercial activity, the Commission has identified a number of factors, including: "(1) whether the sales of the merchandise involve fundraising activity or solicitations for political contributions; (2) whether the activity is engaged in by the vendor for genuinely commercial purposes and not for the purpose of influencing an election; (3) whether the items are sold at the vendor's usual and normal charge; and (4) whether the purchases are made by individuals for their personal use." Dog Eat Dog at 14; *see also* Advisory Opinion 1994-30 (Conservative Concepts/Pence) at 4; Advisory Opinion 1989-21 (Create-a-Craft) at 4.

The Publisher's activities, as described in the request, would involve only the publication, promotion, and sale of Representative Ryan's book, not any fundraising activity or solicitations for political contributions for Representative Ryan, Ryan for Congress, or Prosperity Action. AOR at 16. Such publication, promotion, and sale — especially as conducted by a "long established and prominent publisher" that "publishes a wide variety of different types of books, both political and non-political," *id.* at 1, 16 — are genuine commercial activity on their face. There is no indication in the request that the Publisher seeks to influence a federal election. All of Representative Ryan's books will be sold at usual and normal sales prices (including standard

bulk discounts, where applicable). *See id.* at 2, 16. Based on these representations, the Commission concludes that the Publisher's publication of Representative Ryan's book and payment of the related promotional costs described in the request are *bona fide* commercial activity, and thus they are outside the scope of the Act's regulation.<sup>4</sup>

This response constitutes an advisory opinion concerning the application of FECA 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 requestors may not rely on that conclusion as support for their proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

(signed)  
Lee E. Goodman  
Chairman

---

<sup>4</sup> The request asks whether the Publisher's activities are covered by the media exemption from the definitions of "expenditure" and "contribution." 2 U.S.C. §§ 431(9)(B)(i); *see also* 11 C.F.R. §§ 100.73, 100.132. Because the Publisher's publication of Representative Ryan's book and related promotional activities are *bona fide* commercial activity, and thus already outside the scope of the Act's regulation, the Commission need not determine whether the same activities would also qualify for the media exemption.