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AGENDA DOCUMENT NO. 15-69-C
AGENDA ITEM
For meeting of January 14, 2016
SUBMITTED LATE

January 13, 2016

MEMORANDUM

TO: The Commission

FROM: Daniel A. Petalas *DAP by AN*
Acting General Counsel

Adav Noti *AN*
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Assistant General Counsel

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Subject: AO 2015-14 (Hillary for America II) Draft C

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 January 14, 2016.

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 2015-14

2

3 Marc E. Elias, Esq.

4 Jacquelyn K. Lopez, Esq.

5 Perkins Coie LLP

6 700 13th Street, NW

7 Suite 600

8 Washington, DC 20005-3960

9

10 Dear Mr. Elias and Ms. Lopez:

11 We are responding to your advisory opinion request on behalf of Hillary for America
12 concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (the
13 “Act”), and Commission regulations to your proposal for DePauw University to provide a
14 stipend and academic credit to a student who interned in the requestor’s compliance and vetting
15 departments. The Commission concludes that the provision of a stipend and academic credit is
16 permissible under the Act and Commission regulations.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letter received on October
19 29, 2015, and your email received on December 15, 2015.

20 DePauw is an accredited institution of higher learning holding tax-exempt status under 26
21 U.S.C. § 501(c)(3). Advisory Opinion Request (“AOR”) at AOR002. DePauw administers two
22 programs that help students gain practical experience to supplement their academic studies.
23 First, the Hubbard Center Summer Internship Grant Program (“Grant Program”) provides
24 stipends to students who accept unpaid internships in non-profits, government, or start-ups.
25 AOR003. The Grant Program “exists to help students with summer internship experiences.”
26 AOR025. Stipends are awarded for the purpose of supporting “basic travel and subsistence
27 expenses” of its students. AOR003. The purpose of the Grant Program stipend is not to pay

1 students for the work they perform, but to “offset the basic living expenses that will be incurred
2 during the period spent interning.” AOR003.

3 Under the Grant Program, any DePauw student may apply for a summer stipend of up to
4 \$3,000 by securing a summer internship and submitting a written application and detailed budget
5 to the Hubbard Center, the department that administers the program. The Hubbard Center makes
6 an individualized determination to grant or deny each student’s application, based on a rubric
7 that weighs how well the internship “relate[s] and connect[s] to [the student’s] academic,
8 personal, and professional goals.” AOR003; AOR019-021. Participants in the Grant Program
9 are required to be current students of the University, and are required to return to the University
10 the following fall. AOR026.

11 Second, DePauw requires all students to receive credit from two “Extended Studies”
12 experiences. AOR004. The purpose of the requirement is to ensure students can “intensely
13 focus on a particular topic, problem, or skill-set, which enhances their liberal arts education.”
14 *Id.* (citation omitted). Some students fulfill these credits through summer internships. Students
15 must also submit a “contract that include[s] a list of the personal development goals [they] aim[]
16 to achieve through the experience,” set forth in consultation with both DePauw and the
17 internship supervisor, before submitting for final approval by DePauw, which reviews the
18 application against the aforementioned requirements. *Id.*; AOR023; AOR019-021. During their
19 internship experience, students are expected to “establish and maintain a blog (with weekly entry
20 requirements) and [to] participate in a summer internship information symposium during fall
21 term.” AOR014. Victoria Houghtalen is a current DePauw student. AOR004. In the spring of
22 2015, Ms. Houghtalen was offered an unpaid internship with the requestor, the principal
23 campaign committee for presidential candidate Hillary Clinton, for eight weeks during the

1 summer of 2015. Upon receiving the offer, Ms. Houghtalen applied for a stipend through the
2 Grant Program. After reviewing her application, for which the expenses for her summer
3 experience were budgeted for \$4,735, the Hubbard Center awarded her a \$3,000 stipend for her
4 eight-week internship. *Id.* Ms. Houghtalen also applied to DePauw to receive Extended Studies
5 credit, which DePauw granted. *Id.* Ms. Houghtalen subsequently accepted the offered
6 internship. *Id.*

7 ***Questions Presented***

8 (1) *May DePauw, a 501(c)(3) corporation, provide Ms. Houghtalen with Extended Studies*
9 *credit for the requestor's Internship Program without a contribution to the requestor resulting?*

10 (2) *May DePauw provide Ms. Houghtalen with a stipend without a contribution to the*
11 *requestor resulting?*

12 ***Legal Analysis and Conclusions***

13 (1) *May DePauw, a 501(c)(3) corporation, provide Ms. Houghtalen with Extended Studies*
14 *credit for the requestor's Internship Program without a contribution to the requestor resulting?*

15 Yes, awarding Extended Studies credit will not constitute a contribution to requestor.

16 The Commission has long recognized that college credit received for work on political
17 campaigns is not compensation under the Act, so long as the program is run in a non-partisan
18 manner and in a manner consistent with accepted accreditation standards generally applicable to
19 institutions of higher education. *See* Advisory Opinion 1975-100 (Moss); Factual and Legal
20 Analysis at 7, MUR 6620 (Friends of Brian Woodworth) (July 2, 2013). Because DePauw
21 operates in a non-partisan manner, AOR006, and because the Commission has no reason to
22 doubt that its credit-awarding practices meet generally accepted standards, awarding college

1 credit in this circumstance would not constitute compensation to Ms. Houghtalen within the
2 meaning of the Act. *See* Advisory Opinion 1975-100 (Moss).

3 (2) *May DePauw provide Ms. Houghtalen with a stipend without a contribution to the*
4 *requestor resulting?*

5 Yes, DePauw may provide a stipend without a contribution to the requestor resulting.¹

6 The Act and Commission regulations prohibit a corporation from making any
7 contribution to a candidate in connection with a federal election. 52 U.S.C. § 30118(a), (b)(2);
8 *see also* 11 C.F.R. § 114.2(b). This includes “the payment by any person of *compensation for*
9 *the personal services* of another person which are rendered to a political committee without
10 charge for any purpose.” 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54 (emphasis added).

11 The questions presented by the instant request, therefore, are (1) whether Ms. Houghtalen’s work
12 for the requestor constituted “personal services”; (2) whether the proposed stipend would be
13 “compensation”; and (3) if the Commission answers the first two questions in the affirmative,
14 whether the stipend would be provided “for” the personal services.

15 First, the term “personal services” is not defined in the Act or under Commission
16 regulations. In prior advisory opinions, however, the Commission has recognized that the term
17 encompasses a broad range of activities for purposes of 52 U.S.C. § 30101(8)(A)(ii) and 11
18 C.F.R. § 100.54. For example, in Advisory Opinion 2006-22 (Wallace), the Commission
19 concluded that preparing “an *amicus* brief free of charge” constituted personal services, *id.* at 2,
20 and in Advisory Opinion 1982-04 (Apodaca), the Commission noted that carpentry work “paid
21 by [an] employer or by another person” would constitute personal services. *Id.* at 2. *Cf.*

¹ The requestor raises five discrete questions, with four addressing the provision of a stipend. *See* AOR005. The Commission has consolidated these four questions into the broader question of whether DePauw may provide the stipend. Because the Commission answers Question 2 in the affirmative, these remaining questions regarding the stipend are moot.

1 Advisory Opinion 1980-88 (Citizens for Election of Harry Davis as President Committee)
2 (concluding that bookkeeping activities constituted provision of “personal services” to
3 committee).

4 Here, the student “assisted the [c]ampaign with the preparation of its July quarterly FEC
5 Report, while also spending a significant amount of time engaged in a range of other substantive
6 work pursuant to her interests,” including “helping with [the requestor]’s vetting,” among other
7 things. AOR005. Such “substantive work,” AOR005, provides a service to the committee, and
8 accordingly it constitutes “personal services” for purposes of 52 U.S.C. § 30101(8)(A)(ii) and 11
9 C.F.R. § 100.54.

10 Second, the proposed stipend would constitute compensation to Ms. Houghtalen. In prior
11 advisory opinions, the Commission has consistently concluded that corporations — including
12 501(c)(3) organizations and other non-profit corporations — would be compensating interns by
13 paying them stipends. *See* Advisory Opinion 1982-60 (ASME) at 2 (describing fellowship
14 stipend as “compensation paid by a corporation”); Advisory Opinion 1982-31 (Koenig) at 2
15 (finding stipend to be compensation permitted under exception for legal and accounting
16 services).

17 Thus, because Ms. Houghtalen provided the requestor with personal services, and
18 because the proposed stipend would constitute compensation, the final inquiry under section
19 30101(8)(A)(ii) is whether the stipend would be provided as compensation “for” rendering these
20 personal services. The Commission concludes that it would not.

21 As the request notes, the Grant Program is administered by DePauw, which is an
22 accredited institution of higher learning holding tax-exempt status under 26 U.S.C. § 501(c)(3).
23 AOR002. The Grant Program is part of a bona fide and generally administered academic

1 program and is focused solely on the educational benefit of the student. AOR003. All students
2 who “accept unpaid internships in non-profit, government or start up environments” are eligible
3 to apply for stipends. *Id.* As the request makes clear, the Grant Program reviews each
4 application “to assess the educational benefit of the internship” and to determine “whether the
5 proposed internship will provide an in-depth experience that is focused on the individual
6 student’s learning objectives and interests.” AOR003; AOR014 (“[T]his competitive program
7 will provide a learning experience that connects summer work to individual academic and
8 professional goals.”).

9 The \$3,000 stipend awarded to Ms. Houghtalen was less than her budgeted travel and
10 subsistence expenses for her summer (\$4,735). This supports requestor’s assertion that the
11 purpose of DePauw’s Summer Internship Grant Program stipend is not to pay students for the
12 work they perform, but to “offset the basic living expenses that will be incurred during the period
13 spent interning.” AOR003. This suggests that the compensation should not be considered a
14 contribution. *See* Advisory Opinion 1975-100 (Moss) (work of students for political committee
15 not a contribution “if the students receive no compensation *for the work*, if the Institute’s
16 program is conducted in a nonpartisan manner and in a manner consistent with accepted
17 accreditation standards generally applicable to institutions of higher education” (emphasis
18 added)). *Cf.* Advisory Opinion 1979-67 (RNC-DNC) (Participants paid \$8,000 apiece, in 1979
19 dollars, plus a tuition waiver, for three-to-four-week program, well more than travel and
20 subsistence costs).

21 In the instant matter, every DePauw student is required to participate in the Extended
22 Studies Program. Every student is eligible to help “offset the basic living expenses that will be
23 incurred during the period spent interning” by applying to the Grant Program. AOR003.

1 Conversely, every participant in the Grant Program has an ongoing relationship with the
2 University. DePauw's Extended Studies program is an integral part of DePauw's existing
3 educational program. The Grant Program exists for the educational benefit of the student (and
4 not for the benefit of political committees). Both the Extended Studies Program and the Grant
5 Program are conducted in a non-partisan manner and are not designed to advance political goals
6 or activities. These factors support the conclusion that the purpose of the stipend paid to students
7 through this program is to support the fulfillment of their academic requirements. Allowing Ms.
8 Houghtalen to accept the stipend would put her on an even footing with her fellow students
9 engaging in non-political internships.

10 DePauw's Grant Program may be distinguished from those of certain prior advisory
11 opinions, which stated (sometimes in dicta) that a corporation's payment of a stipend to an intern
12 who is engaged in campaign activity would be compensating that intern for his or her campaign
13 work. In those prior advisory opinions, there was not necessarily an ongoing educational
14 relationship between the organization and the student. *See, e.g.*, Advisory Opinion 1979-67
15 (RNC-DNC) (program participants, who were current high-school teachers, not required to have
16 any pre-existing relationship with Vanderbilt University); Advisory Opinion 2003-20 (Reyes)
17 (organization was separate scholarship fund to which students applied); Advisory Opinion 1985-
18 17 (CYLC) (same); Advisory Opinion 1982-60 (ASME) (association's fellows had no pre-
19 existing relationship with the organization).

20 The ongoing relationship with participating students is important because DePauw's
21 Grant Program facilitates a requirement of the university's overall educational program. All
22 DePauw students must participate in two "extended studies" programs to graduate; whether a
23 stipend is awarded to a student for an extended study program depends not on the content of the

1 extended study program, but on the demonstrated financial expenses of any DePauw student
2 during the extended study program. Accordingly, due to all the factors addressed above, for
3 purposes of 30101(8)(A)(ii), the Commission concludes that receiving the stipend would not
4 compensate Ms. Houghtalen “for” her time spent on the campaign. Thus, DePauw’s payment of
5 the stipend would not result in an impermissible corporate contribution.²

6 This response constitutes an advisory opinion concerning the application of the Act and
7 Commission regulations to the specific transaction or activity set forth in your request. *See*
8 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or
9 assumptions presented, and such facts or assumptions are material to a conclusion presented in
10 this advisory opinion, then the requestor may not rely on that conclusion as support for its
11 proposed activity. Any person involved in any specific transaction or activity which is
12 indistinguishable in all its material aspects from the transaction or activity with respect to which
13 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
14 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
15 affected by subsequent developments in the law including, but not limited to, statutes,
16 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
17 on the Commission’s website.

18 On behalf of the Commission,
19

20
21 Matthew S. Petersen
22 Chairman
23

² The Commission notes that this conclusion harmonizes the Commission’s treatment of internship programs providing stipends with the treatment of programs providing academic credit, which are discussed above in response to question 1.