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By Commission Secretary's Office at 8:54 am, Feb 11, 2016



FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 15-69-D
AGENDA ITEM
For meeting of February 11, 2016
SUBMITTED LATE

February 11, 2016

MEMORANDUM

TO: The Commission

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

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Attorney

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

Attached is a proposed draft of the subject advisory opinion.

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 (the
12 “Committee” or “requestor”) concerning the application of the Federal Election Campaign Act,
13 52 U.S.C. §§ 30101-46 (the “Act”), and Commission regulations to DePauw University’s
14 (“DePauw”) provision of a stipend and academic credit to a student who interned for the
15 Committee. 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 correspondence dated
19 October 29, 2015, December 15, 2015, and January 12, 2016.

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. *Id.*
25 at AOR003. The Grant Program “exists to help students with summer internship experiences.”
26 *Id.* at AOR025. Stipends are awarded for the purpose of supporting “basic travel and subsistence
27 expenses” of its students. *Id.* at AOR003. The purpose of the Grant Program stipend is not to

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

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

11 DePauw requires all students to receive credit from two “Extended Studies” experiences.
12 *Id.* at AOR004. The purpose of the requirement is to ensure students can “intensely focus on a
13 particular topic, problem, or skill-set, which enhances their liberal arts education.” *Id.* (citation
14 omitted). Some students fulfill these credits through summer internships. During their
15 internship experience, students are expected to “establish and maintain a blog (with weekly entry
16 requirements) and [to] participate in a summer internship information symposium during fall
17 term.” *Id.* at AOR014.

18 Victoria Houghtalen is a current DePauw student. *Id.* at AOR004. In the spring of 2015,
19 Ms. Houghtalen was offered an unpaid internship with the requestor, the principal campaign
20 committee for presidential candidate Hillary Clinton, for eight weeks during the summer of
21 2015. Upon receiving the offer, Ms. Houghtalen applied for a stipend through the Grant
22 Program. Her application projected a summer subsistence budget of \$4,735. The Hubbard
23 Center reviewed the application and awarded her a \$3,000 stipend for her eight-week internship.

1 *Id.* Ms. Houghtalen also applied to DePauw to receive Extended Studies academic credit, which
2 DePauw granted. *Id.* Ms. Houghtalen subsequently accepted the offered internship. *Id.* The
3 Committee asks if the stipend or academic credit Ms. Houghtalen received from DePauw
4 constitutes a corporate contribution.

5 ***Questions Presented***

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

8 (2) *May DePauw provide Ms. Houghtalen a stipend without a contribution to the requestor*
9 *resulting?*

10 ***Legal Analysis and Conclusions***

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

13 Yes, DePauw's award of Extended Studies credit does not constitute a contribution to
14 requestor. The Commission has long recognized that college credit received for work on
15 political campaigns is not compensation under the Act, so long as the program is administered in
16 a non-partisan manner and in a manner consistent with accepted accreditation standards
17 generally applicable to institutions of higher education. *See* Advisory Opinion 1975-100 (Moss);
18 Factual and Legal Analysis at 7, MUR 6620 (Friends of Brian Woodworth) (July 2, 2013).
19 Because DePauw operates in a non-partisan manner, AOR at AOR006, and because the
20 Commission has no reason to doubt that its credit-awarding practices meet generally accepted
21 standards, awarding college credit in this circumstance would not constitute compensation to Ms.
22 Houghtalen within the meaning of the Act. *See* Advisory Opinion 1975-100 (Moss).

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

3 Yes, DePauw’s award of a stipend does not constitute a contribution to requestor because
4 the stipends are provided to students for bona fide educational objectives and not for the
5 provision of personal services to federal campaigns.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 Thus, the question presented here is whether DePauw’s payment of a stipend to Ms. Houghtalen
12 to facilitate her internship for bona fide educational purposes constitutes “compensation for the
13 personal services” of Ms. Houghtalen.

14 The term “personal services” is not defined in the Act or under Commission regulations.
15 In prior advisory opinions, however, the Commission has recognized that the term encompasses
16 a broad range of activities for virtually any purpose of 52 U.S.C. § 30101(8)(A)(ii) and 11 C.F.R.
17 § 100.54. For example, in Advisory Opinion 2006-22 (Wallace), the Commission concluded that
18 preparing “an *amicus* brief free of charge” constituted personal services, *id.* at 2, and in Advisory
19 Opinion 1982-04 (Apodaca), the Commission noted that carpentry work “paid by [an] employer
20 or by another person” would constitute personal services. *Id.* at 2. *Cf.* Advisory Opinion 1980-
21 88 (Citizens for Election of Harry Davis as President Committee) (concluding that bookkeeping

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 activities constituted provision of “personal services” to committee). Significantly, legal and
2 accounting compliance services are specifically exempted from the purposes recognized as
3 “personal services” treated as a contribution. 52 U.S.C. § 30101(8)(B)(viii).

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 activities. AOR at AOR005. Such “substantive work,” *id.* at AOR005, provides a service to the
8 committee, and accordingly the Committee received the benefit of Ms. Houghtalen’s “personal
9 services” for purposes of 52 U.S.C. § 30101(8)(A)(ii) and 11 C.F.R. § 100.54, while her work on
10 legal and accounting compliance is exempt.

11 However, just because the Committee received Ms. Houghtalen’s personal services does
12 not mean that DePauw’s stipend was “compensation for” the purpose of providing these personal
13 services. The Commission recognizes the unique nature of internship programs and the
14 educational benefits derived from substantive internships in all fields, and that the purpose of
15 these internships and of these stipends is to provide experience to the student, irrespective of
16 where he or she chooses to spend his or her time and not for the compensation of personal
17 services to a federal committee. In this way, educational subsistence stipends for the purpose of
18 assisting students in fulfilling *bona fide* educational objectives, and not for the purpose of
19 providing personal services to federal campaigns, are not compensation for personal services.

20 Here, the educational bases on which DePauw grants stipends establish that the stipend
21 does not constitute compensation for personal services within the meaning of the Act. First and
22 foremost, DePauw’s Grant Program is clearly administered “for the *sole purpose of assisting*
23 *[students] with an educational experience,*” Requestor Supp. Ltr. at 2 (Dec. 16, 2016) (emphasis

1 in original), and “is administered for a general educational purpose.” *Id.* All students who
2 “accept unpaid internships in non-profit, government or start up environments” are eligible to
3 apply to the Grant Program for stipends. AOR at AOR003. The Grant Program reviews each
4 student application “to assess the educational benefit of the internship” and to determine
5 “whether the proposed internship will provide an in-depth experience that is focused on the
6 individual student’s learning objectives and interests.” *Id.* at AOR003, AOR014.

7 Furthermore, the purpose of the stipends is to “...provide basic financial support to
8 students who accept unpaid internships in a non-profit, government, or start-up environment that
9 might otherwise be cost prohibitive to the student.” AOR at AOR003. Students must show that
10 the internship “relate[s] and connect[s] to [the student’s] academic, personal, and professional
11 goals.” *Id.* The fact that the \$3,000 stipend awarded to Ms. Houghtalen was less than her
12 budgeted travel and subsistence expenses for her summer internship (\$4,735) supports
13 requestor’s assertion that the purpose of the stipend is “solely to provide students with financial
14 support for the basic travel and subsistence expenses incurred during the internship experience,
15 not to compensate them for services provided to the organization for whom they intern.” *Id.*
16 Whether a subsistence stipend is awarded to a student, and the amount awarded, does not depend
17 on the entity in which the intern is placed, the number of hours the students work, or the
18 economic value of the work performed. Rather, the stipend is based on the demonstrated
19 financial expenses of the student to complete a bona fide educational objective—and even then,
20 as in Ms. Houghtalen’s case, the stipend may not fulfill the student’s entire subsistence need.

21 These facts establish that the Grant Program stipends are provided to students for *bona*
22 *fide* educational purposes and not for the purpose of benefitting political committees. Because
23 DePauw pays educational subsistence stipends for the purpose of assisting students in fulfilling

1 *bona fide* educational objectives, and not for the purpose of providing personal services to
2 federal campaigns, the DePauw subsistence stipend to Ms. Houghtalen is not compensation for
3 personal services provided by Ms. Houghtalen to the committee and therefore not a contribution
4 under 52 U.S.C. § 30101(8)(A)(ii). Thus, DePauw's payment of the stipend would not result in
5 an impermissible corporate contribution to the Committee.

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. This opinion expresses no opinion regarding the
17 Internal Revenue Code or any other state or federal law. Any advisory opinions cited herein are
18 available on the Commission's website.

19 On behalf of the Commission,
20

21
22 Matthew S. Petersen
23 Chairman