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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 16-22-A
AGENDA ITEM
For meeting of June 16, 2016

June 9, 2016

MEMORANDUM

TO: The Commission

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

Adav Noti *AN*
Acting Associate General Counsel

Neven F. Stipanovic *NES*
Acting Assistant General Counsel

Joanna S. Waldstreicher *JSW*
Attorney

Subject: AO 2016-05 (Huckabee for President) Draft A

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 12:00 pm (Eastern Time) on June 15, 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 2016-05
2
3 Douglas Chalmers, Jr., Esq.
4 Chalmers Pak Burch & Adams, LLC
5 1300 Pennsylvania Ave NW #190-612
6 Washington, DC 20004
7

DRAFT A

8 Dear Mr. Chalmers:

9 We are responding to your advisory opinion request on behalf of Huckabee for President,
10 Inc. (the “Committee”) concerning the application of the Federal Election Campaign Act,
11 52 U.S.C. §§ 30101-46 (the “Act”), and Commission regulations to the proposed use of a legal
12 defense fund (the “Fund”) to pay a settlement arising out of a copyright infringement lawsuit.
13 The Commission concludes that the proposal is permissible.

14 ***Background***

15 The facts presented in this advisory opinion are based on your letter received on May 9
16 and your email received on May 13, 2016 (the “AOR”).

17 The Committee is the principal campaign committee of former Arkansas Governor Mike
18 Huckabee, a candidate for President in 2016. On November 18, 2015, Rude Music, Inc. filed a
19 copyright infringement lawsuit against the Committee in the U.S. District Court for the Northern
20 District of Illinois. The complaint, seeking injunctive relief and monetary damages, alleged that
21 the Committee had violated federal copyright law by playing the song “Eye of the Tiger” at a
22 campaign event on September 8, 2015. The Committee, rising up to the challenge of its rival,
23 incurred attorneys’ fees and other expenses in defending itself in that litigation. After briefly
24 relishing the thrill of the fight, the parties settled the lawsuit for an undisclosed amount.

25 The Fund will be used to pay the Committee’s attorneys’ fees and expenses and a portion
26 of the settlement amount. The Fund will be established and administered in accordance with the
27 Commission’s previous advisory opinions, including Advisory Opinion 2011-01 (Robin

1 Carnahan for Senate), in which the proposed legal defense fund was established and
2 administered entirely separately from the campaign committee, solicitations for the legal defense
3 fund were conducted separately from any solicitation for the campaign committee, and all
4 amounts received by the legal defense fund were held separately from the campaign committee's
5 funds. *Id.* at 3-4. No amounts will be paid from the Fund to the Committee.

6 ***Question Presented***

7 *If the Fund is established pursuant to the requirements set out in previous Commission*
8 *advisory opinions, including Advisory Opinion 2011-01, may the Fund be used to pay the cost of*
9 *a portion of the settlement of the copyright infringement lawsuit against the Committee?*

10 ***Legal Analysis and Conclusion***

11 Yes, the Fund may be used as described in the request to pay a portion of the amount that
12 the Committee is obligated to pay under the settlement agreement arising out of the copyright
13 infringement lawsuit.

14 In Advisory Opinion 2011-01 (Robin Carnahan for Senate), a candidate's principal
15 campaign committee was sued by a broadcaster for copyright infringement, and the campaign
16 committee, which ultimately settled the lawsuit, proposed to use a legal defense fund to pay the
17 attorneys' fees and costs it had incurred in defending itself. The Commission approved this
18 proposal, noting that "the amounts received and disbursed by the [legal defense fund] would be
19 strictly for the purpose of paying the [campaign committee's] legal costs in connection with the
20 [copyright infringement] lawsuit," specifically to compensate the campaign committee's counsel
21 for defending and settling the underlying litigation.

22 The instant request states that the Fund would be established and operated pursuant to
23 Advisory Opinion 2011-01 (Robin Carnahan for Senate), the only difference being that the Fund

1 would pay a settlement amount in addition to attorneys' fees and costs. This difference is not
2 material: The Committee's payment to the plaintiff pursuant to the settlement agreement, like
3 the legal costs and attorneys' fees incurred by the Committee, is a binding obligation arising out
4 of the Committee's "defense to a civil complaint in a lawsuit alleging copyright infringement."
5 *Id.* at 3. Accordingly, the Commission concludes that the proposal to use the Fund to pay the
6 Committee's settlement is permissible.

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

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20 On behalf of the Commission,

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22
23 Matthew S. Petersen
24 Chairman
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