



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 6, 1992

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-1

Roger Faulkner
126 North Blair
Apartment 3
Madison, WI 53703

Dear Mr. Faulkner:

This responds to your letter of December 2, 1991, as supplemented by your letter dated January 3, 1992, requesting an advisory opinion regarding the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a contractual arrangement you wish to enter into with your principal campaign committee, Faulkner for Senate (the "Committee").

Your request and information on file with the Federal Election Commission (the "Commission") indicates that you are a candidate in the Republican primary for the 1992 U.S. Senate race in Wisconsin.^{1/}

You state that you wish to enter into a contractual arrangement with the Committee in which the Committee will pay you a salary of \$3,000 per month.^{2/} In return, you state that you "shall be obligated by contract to provide services to the campaign committee, including the management of the campaign and making appearances on behalf of the campaign." The duration of the contract will be variable. You state that it will cover the period from February 1, 1992 until the end of the month following the last election for which you are officially a candidate. You state that if you are defeated in the primary election, the contract will be for the period from February 1 to September 30, 1992. Should you enter the general election, you state that the contract will cover the period from February 1 to November 30, 1992.

Regarding your personal expenses incurred during the campaign, you propose to pay them from the salary you receive from the Committee. You describe these as "rent, food while at home, child support, health care, utilities, and insurance." You state that there are additional expenses

which you may incur and will charge directly to the campaign. These you describe as travel, lodging, and meal expenses while on campaign business, photocopying, postage, and telephone expenses for calls on behalf of the campaign. You further state that these latter expenses will be reimbursable only if you provide the campaign committee treasurer with receipts for such expenses. You ask whether the described arrangements are permissible under the Act and Commission regulations.

The Commission has previously stated that, under the Act and Commission regulations, a candidate and the candidate's campaign committee have wide discretion in making expenditures to influence the candidate's election, but may not convert excess campaign funds to personal use. 2 U.S.C. 431(9) and 439a; Advisory Opinions 1988-13, 1987-2, 1987-1, 1985-42, 1984-8, 1980-138 and 1980-49.

The Commission initially considered whether 2 U.S.C. 439a and Commission regulations would permit or bar your campaign committee from paying you a salary pursuant to your proposal, but could not reach a majority decision by the required four affirmative votes.^{3/} See 2 U.S.C. 437c(c).

The Commission concludes that the broad discretion given campaign committees allows the Committee to reimburse your travel and subsistence expenses and the other expenses (telephone, postage and photocopying) which relate to your campaign. In the past, the Commission has found such expenses to be within the parameters of this discretion allotted campaign committees for their campaign expenditures. See Advisory Opinion 1984-8.

The payments made by the Committee for your travel and other campaign related expenses are operating expenditures under the Act and must be itemized and reported as such by the Committee. See 2 U.S.C. 434(b)(4)(A) and (5)(A).

Regarding your travel and other campaign expenses, payment by an individual using his personal funds for costs incurred in providing services or goods to a committee is considered a contribution to that committee. 11 CFR 116.5(b). An exception is where the costs are incurred by an individual for transportation expenses while traveling on behalf of the candidate or committee and the individual is reimbursed within a limited period of time. 11 CFR 116.5(b)(1) and (2). Therefore, your personal travel expenses, if reimbursed within the correct period, are not reportable contributions to the Committee. However, the other non-travel campaign related expenses you describe (photocopying, postage and telephone expenses for campaign matters) must be itemized as in-kind contributions made by you to the Committee if the outstanding amount advanced by you, when aggregated with other contributions, exceeds \$200 for the calendar year and the reimbursement does not bring you below the \$200 itemization threshold before the end of the reporting period.^{4/} The Committee should report those advances only as memo entries on Schedule A, so that they do not inflate total contributions reported. However, in contrast to the way other in-kind contributions are reported, corresponding disbursements should not be reported until the Committee subsequently reimburses you. The disbursements reported should indicate the previous memo entry to which they relate. If the reimbursement is not made in the same reporting period as the original advance, the Committee should also report the debt owed if it exceeds \$500 or has been outstanding for more than 60 days. 11 CFR 104.11.

Under the Act you are also considered an agent of your principal campaign committee when you make these expenditures in connection with your campaign. 2 U.S.C. 432(e)(2); see Advisory Opinion 1984-8. Thus whenever you pay campaign travel or other campaign expenses, you should provide the Committee the documentation that is required by the Act. See 11 CFR 102.9(b)(1) and (2); Advisory Opinion 1984-8.

The Commission expresses no opinion as to the possible application of Wisconsin state law or as to any tax ramifications to your activity, since those issues are outside its jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Joan D. Aikens
Chairman for the Federal Election Commission

Enclosure (AOs 1988-13, 1987-2, 1987-1, 1985-42, 1984-8, 1980-138, and 1980-49)

ENDNOTES

1/ According to Commission records, the statement of candidacy and the Committee's statement of organization were filed on December 5, 1991.

2/ Although you do not provide salary figures, you state that this proposed salary is less than the amount you were paid in your recent employment as a research scientist.

3/ On February 27, 1992, the Commission voted on two motions with respect to a draft opinion presented in Agenda Document #92-26. Both motions failed by votes of 3-3.

4/ No contribution limits are implicated in these transactions, since there is no limit to the amount of your personal funds you may contribute to your campaign. See 11 CFR 110.10(a).