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June 15, 2006

AGENDA ITEM

For Meeting of: 6-22-06

MEMORANDUM

TO: The Commission

THROUGH: Robert J. Costa *AK*
Acting Staff Director

FROM: Lawrence H. Norton *LHN (by JAR)*
General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Mai T. Dinh *MD*
Assistant General Counsel

J. Duane Pugh *JDP*
Senior Attorney

Subject: Draft AO 2006-18

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for June 22, 2006.

Attachment

1 ADVISORY OPINION 2006-18

2 Jan Witold Baran, Esq.
3 Wiley Rein & Fielding LLP
4 1776 K Street, N.W.
5 Washington, D.C. 20006

DRAFT

6 Dear Mr. Baran:

7 We are responding to your advisory opinion request on behalf of Representative Kay
8 Granger and the Kay Granger Campaign Fund (the “Committee”), concerning the application of
9 the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission
10 regulations to promoting sales of a children’s book Representative Granger wrote. The
11 Committee would like to use paid Committee personnel, the Committee’s website, and the
12 Committee’s mailing list of email addresses to promote sales of the book and book-related
13 events. Because all royalties Representative Granger earns from book sales will be donated to
14 charitable organizations, using Committee resources for these purposes does not constitute
15 prohibited personal use of contributions. Therefore, the Commission concludes that the
16 Committee may promote Representative Granger’s book and book-related events in the manner
17 proposed.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received May 3,
20 2006, as supplemented by e-mails dated May 15 and June 9, 2006.

21 The Committee is Representative Granger’s principal campaign committee in her
22 candidacy for reelection to the House of Representatives. She wrote a children’s book entitled
23 *What’s Right About America: Celebrating Our Nation’s Values* that will be published in July
24 by World Ahead Publishing, Inc.

1 The Committee has a website, www.kaygranger.com, that includes a substantial amount
2 of campaign material, including a brief biography of the candidate, news articles, press releases,
3 policy position summaries, material seeking contributions and volunteers, and similar material.
4 The Committee proposes to add the following to its campaign website about upcoming book-
5 related events:

6 On July 4, 2006, Congresswoman Kay Granger's first book will be
7 published. 'What's Right About America: Celebrating Our Nation's Values' is a
8 short history of the universal values that make America great. Join Kay at ____
9 on July ____ for a reading and book signings.

10
11 The Committee anticipates numerous book events, both within and outside Representative
12 Granger's Congressional District. In addition to providing information about book-related
13 events, the Committee would also like to provide information on the website about how to
14 order a copy of the book.

15 The Committee also proposes to e-mail individuals on the Committee's mailing list to
16 publicize the book and provide them with information on how to purchase a copy of the book,
17 including a link to Amazon.com or a similar website. The e-mails would also provide
18 information about upcoming book-related events.

19 In supplementing your advisory opinion request, you explained that paid Committee
20 personnel will be involved in garnering information about the events, posting and updating
21 website information, drafting and sending e-mails, and handling any resulting public and press
22 inquiries. Committee staff would also like to organize and attend book-signing events, if
23 permissible under the Act. You also explained that the costs associated with the promotional
24 materials on the website would be more than a *de minimis* amount. Additionally, the costs

1 associated with the use of the Committee's mailing list to send promotional materials would be
2 more than a *de minimis* amount.

3 Neither Representative Granger nor the Committee would receive any royalties on any
4 book sales. Instead, the contract between the publisher and Representative Granger specifies
5 that all royalties from the sale of the book will be paid as designated by Representative Granger
6 to two charitable organizations that are exempt from taxation under 26 U.S.C. 501(c)(3).
7 Representative Granger intends to declare the royalties as income for income tax purposes to
8 the extent required by tax law. She also intends to deduct the royalties as charitable
9 contributions to the extent permitted by tax law, which would either entirely or partially offset
10 the declared income.

11 ***Questions Presented***

12 *May the Committee use paid Committee staff, the Committee's website, and the*
13 *Committee's mailing list of e-mail address to promote Representative Granger's book and*
14 *book-related events? May Committee staff also organize and attend book-related events?*

15 ***Legal Analysis and Conclusions***

16 Yes, the Committee and Committee personnel may do so because Representative
17 Granger has arranged to donate all royalties to charity, so the cost of promoting the book and
18 the book-related events do not constitute a prohibited personal use of campaign funds.

19 Under the Act and Commission regulations, a candidate and his or her authorized
20 committee have wide discretion in making expenditures to influence the candidate's election.
21 2 U.S.C. 439a(a); 11 CFR 113.2. However, neither the candidate nor the candidate's
22 authorized committee may convert contributions accepted by the candidate to the personal use

1 of the candidate or any other person. 2 U.S.C. 439a(b); 11 CFR 113.1(g) and 113.2(e)(5). The
2 Act specifies that conversion to personal use occurs when a “contribution or amount is used to
3 fulfill *any commitment, obligation, or expense of a person* that would exist irrespective of the
4 candidate’s election campaign or individual’s duties as a holder of Federal office.”

5 2 U.S.C. 439a(b)(2) (emphasis added). Here, Representative Granger’s expenses as an author
6 in marketing the book exist irrespective of her campaign.

7 The Act and Commission regulations provide a non-exhaustive list of items that would
8 constitute personal use *per se*. See 2 U.S.C. 439a(b)(2); 11 CFR 113.1(g)(1)(i). For items not
9 on this list, the Commission makes a determination, on a case-by-case basis, whether an
10 expense would fall within the definition of “personal use.” 11 CFR 113.1(g)(1)(ii).

11 The Commission recently considered a similar situation in Advisory Opinion 2006-7
12 (Hayworth). In that Advisory Opinion, the Commission concluded that the expenses associated
13 with marketing a book that a commercial publisher had published and for which it paid
14 royalties to the candidate were expenses that existed irrespective of the candidate’s election
15 campaign or duties as a holder of Federal office. Therefore, use of an authorized committee
16 asset, like the committee’s website, to promote a book would have ordinarily constituted a
17 prohibited personal use of the contributions that paid for the asset. However, in Advisory
18 Opinion 2006-7 (Hayworth), the Commission determined that because the cost of adding this
19 material to an otherwise substantial website was *de minimis*, the proposed website additions did
20 not constitute a prohibited personal use of campaign funds. The Committee here anticipates
21 that expenses related to promote the book and book-related events would be more than *de*
22 *minimis*.

1 The Committee’s proposal differs from the proposal considered in Advisory Opinion
2 2006-7 (Hayworth) in another respect. In Advisory Opinion 2006-7 (Hayworth),
3 Representative Hayworth chose to receive royalties on his book. In contrast, Representative
4 Granger’s contract with her publisher requires the publisher to donate any royalties she earns to
5 two charitable organizations. Because Representative Granger’s royalties will be donated to
6 charitable organizations, she will not personally gain from the use of Committee funds or assets
7 for the contemplated activities. All of the examples of prohibited personal use specified in the
8 Act involve personal benefits or obligations of a candidate, a candidate’s family, or another
9 person. *See* 2 U.S.C. 439a(b)(2)(A) through (I). Therefore, in light of the absence of any such
10 personal benefit from the proposed activities, the Commission determines that the proposed
11 activities do not constitute a prohibited personal use of campaign funds.¹ This conclusion is
12 consistent with the treatment of charitable donations in the Commission’s regulations at
13 11 CFR 113.1(g)(2). That regulation provides that the donation of campaign funds to a
14 charitable organization is not a personal use. *Cf.* 2 U.S.C. 439a(a)(3). The Committee may use
15 its website, mailing list, and paid personnel to promote sales of Representative Granger’s book
16 and to organize, attend, and promote book-related events.²

¹ The Committee on Standards of Official Conduct in applying the Rules of the House of Representatives considered a Member of Congress’s receipt of “royalties or any other personal benefit” as a basis for finding the activity was personal use of campaign funds prohibited under Rule XXIII, clause 6(b). *See* H.R. Comm. on Standards of Official Conduct, 107th Cong., Campaign Activity booklet, “Proper Use of Campaign Funds and Resources,” Example 5 (Dec. 2001), *superseding* House Ethics Manual, Chapter 8 (Apr. 1992).

² Because the proposed activities are permissible, the Commission does not need to consider whether they also arise from Representative Granger’s duties as a Federal officeholder.

