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FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

JUL - 5 2001

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lois G. Lerner
Acting General Counsel

N. Bradley Litchfield *NBL (ALS)*
Associate General Counsel

Michael G. Marinelli *GM*
Staff Attorney

SUBJECT: Draft AO 2001-10

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for July 12, 2001

AGENDA ITEM
For Meeting of: 7-12-01

Attachment

1 ADVISORY OPINION 2001-10

2
3 The Honorable Jesse L. Jackson, Jr.
4 P.O. Box 490286
5 Chicago IL, 60649-9906

6
7 Dear Mr. Jackson:

8
9 This refers to your letter dated June 8, 2001, requesting advice on the application
10 of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission
11 regulations to your proposal to have your principal campaign committee hire your wife,
12 Ms. Sandi Jackson, as a consultant.

13 **FACTS**

14 You state your principal campaign committee, Jesse L. Jackson, Jr. for Congress
15 ("the Committee"), plans to employ your wife as a consultant. You explain that, in her
16 capacity as a consultant, Ms. Jackson would provide critical fundraising, administrative
17 support and services for your campaign organization and operations, which you are now
18 in the process of restructuring. It is your view that your wife's considerable experience
19 and expertise would be of great assistance to your re-election and fundraising efforts.

20 You explain that throughout your wife's career, she has worked in various
21 positions in both campaigns and government. In addition to past employment as chief of
22 staff for former Congressman Cleo Fields and press secretary for the late Representative
23 Mickey Leland, Ms. Jackson has worked in national campaigns, including both the 1988
24 Dukakis and 1996 Clinton Presidential bids. Most recently, Ms. Jackson has served as
25 Vice President of Congressional and External Affairs for the Export-Import bank of the
26 United States.

1 Considering her considerable qualifications and your interest in employing
2 Ms. Jackson, you desire the guidance and counsel of the Commission.¹ You
3 affirm that you want to be certain that all the terms of any future contract between
4 your wife and your campaign committee comply with the Act and Commission
5 regulations. In this regard, you ask whether the hiring of your wife raises any
6 conflicts of interest. You ask what documentation and disclosure are necessary to
7 support such a contractual arrangement between your wife and the Committee.
8 Further, you wish to know what other issues should be considered to avoid any
9 problems in the future.

10 **ACT AND COMMISSION REGULATIONS**

11 The Commission has historically recognized that candidates have wide
12 discretion in making expenditures to influence their election. However, the Act
13 prohibits the conversion of campaign funds to personal use. 2 U.S.C. §439a; 11 CFR
14 113.2(d); see also Advisory Opinions 2001-03, 2000-40, 2000-37, 2000-12.
15 Commission regulations at 11 CFR 113.1(g) define personal use for the purposes of
16 this prohibition. Generally, personal use is "any use of funds in a campaign account
17 of a present or former candidate to fulfill a commitment, obligation or expense of any
18 person that would exist irrespective of the candidate's campaign or duties as a Federal
19 officeholder." 11 CFR 113.1(g). The rules list certain uses of campaign funds that
20 will be considered *per se* personal use. 11 CFR 113.1(g)(1)(i).

¹ In a July 3, phone conversation you further stated that while your wife will be working full-time for the campaign, it is possible that she will still handle, and be paid for, occasional consulting work for her current non-political clients.

1 Under this regulation, personal use includes the use of funds in a campaign
2 account for the following purposes: household food items or supplies; funeral,
3 cremation or burial expenses; clothing; tuition payments not associated with training
4 campaign staff; mortgage, rent or utility payments for the personal residence of a
5 candidate or his family; admission to sporting events, concerts, or other forms of
6 entertainment, unless part of a specific campaign or officeholder activity; dues, fees or
7 gratuities to a country club, recreational facility, or other nonpolitical organization,
8 unless they are part of the costs of a specific fundraising event on the organization's
9 premises; and salary payments to family members, unless they are fair market value
10 payments for *bona fide*, campaign-related services.² If a family member is providing
11 *bona fide* services to the campaign, any salary payment in excess of the fair market
12 value of the services provided is personal use. 11 CFR 113.1(g)(1)(i)(H).

13 APPLICATION TO PROPOSAL

14 The Commission concludes that your proposal is permissible under the Act and
15 Commission regulations. The regulations specifically permit salary payments to family
16 members where they are payments for "*bona fide*, campaign related services." 11 CFR
17 113.1(g)(1)(i)(H). Regarding the terms of any contract the Committee may enter into
18 with your wife, the Commission notes that as part of the Committee's requirement to pay
19 family members no more than the fair market value of *bona fide* services, the contract
20 should contain terms customarily found in agreements entered into between paid
21 campaign consultants and candidate committees. It should conform to the standard

² Other uses of campaign funds are to be examined on a case-by-case basis using the general definition of personal use. 11 CFR 113.1(g)(1)(ii). These include, but are not limited to, legal expenses, costs of meals, travel, and vehicle expenses. *Id.*

1 industry practice for this type of contract. Beyond this, no special obligation is imposed
2 by the Act or Commission regulations.

3 For example, you have not stated explicitly if the contract will be in a written (or
4 electronic) format. If it is customary that agreements between campaign committees and
5 consultants hired to perform Ms. Jackson's fundraising and administrative support duties
6 are in writing, then any agreement between her and the Committee should be also be in
7 writing. Further, to satisfy the record keeping requirements of 11 CFR 104.14(b), the
8 Committee would be required to preserve documentation relating to Ms. Jackson's
9 employment for a period of not less than 3 years after the filing of any report to which
10 those records may relate.³ See also 11 CFR 102.9(b)(1) and Advisory Opinion 2001-03.⁴

11 You also ask what are the disclosure requirements that are necessary under the
12 Act and Commission regulations for the contractual arrangement. Salary payments are
13 considered operating expenditures and would have to be itemized and reported as any
14 other type of committee operating expenditure. See 11 CFR 104.3(b)(2)(i). The Act and
15 Commission regulations do not impose additional disclosure requirements for salary
16 payments made to family members for *bona fide* campaign work.

17 The Commission expresses no opinion regarding application of any rules of the
18 House of Representatives, or the Ethics in Government Act to the described activities,
19 because these issues are not within its jurisdiction.⁵ For the same reason, the

³ Records to be maintained include bank records receipts, bills vouchers worksheets which provide in sufficient detail the necessary information and data. *Id.*

⁴ Under 11 CFR 102.9(b)(1), the Committee is required to maintain an account of all disbursements made by or on behalf of the political committee including (among other information) the name and address of every person to whom any disbursement is made; the date, amount and purpose of the disbursement.

⁵ You specifically ask in your request whether the hiring of your wife "would raise any conflicts of interest." The Commission notes that its response to any advisory opinion request, again, is strictly limited to the application of the Act and Commission regulations. In this request, its conclusions are limited as to

1 Commission does not express any views as to any Federal or other tax ramifications.

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

5 Sincerely,

6
7 Danny L. McDonald
8 Chairman
9

10 Enclosures (AOs 2001-03, 2000-40, 2000-37, 2000-12)
11

whether your proposal is permissible under the personal use regulations discussed above.