



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

AUG 10 12 04 PM '95

August 10, 1995

**MEMORANDUM**

**TO:** The Commission

**THROUGH:** John C. Surina  
Staff Director

**FROM:** Lawrence M. Noble  
General Counsel

N. Bradley Litchfield NBL/KSP  
Associate General Counsel

Jonathan M. Levin JI  
Senior Attorney

**Subject:** Draft AO 1995-24

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for August 17, 1995.

Attachment

**AGENDA ITEM**  
For Meeting of: AUG 17 1995

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

ADVISORY OPINION 1995-24

Robert Palmer, Ph.D.  
1819 Newcastle Drive  
Los Altos, CA 94024

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARY  
AUG 10 1995  
**DRAFT**

Dear Dr. Palmer:

This refers to your letters dated May 30, June 14, and August 3, 1995, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to retirement of a debt owed to you by your principal campaign committee.

Your principal campaign committee for your 1990 primary and general election House campaign, Robert Palmer for Congress ("the Committee"), owes you over \$50,000 from loans reported as being made to the Committee. You note that the committee has no cash on hand and, hence, it has no funds to pay for solicitations of contributions.

You have proposed a plan to retire the Committee's debt to you. In 1992, you self-published a book, and you presently store 2,630 copies in a warehouse in Mansfield, Ohio. You plan to sell these copies to the Committee at \$1.50 per book, which is the printing cost. The Committee would solicit contributions to retire your primary and general election campaign debt by providing a copy of the book in return for a contribution in the amount of the \$24.95 cover price, or a greater amount. When the debt is retired, you will file a termination report with the Commission.

You ask whether it would be permissible under the Act if you sold all 2,630 copies to the Committee in a bulk sale for

3 \$1.50 per book. You also ask whether you may sell smaller  
4 quantities of the books to the Committee (for the same  
5 amount), as the books are needed by the Committee. Subject  
6 to the conditions set out below, the Commission concludes  
7 that you may sell the books to the Committee in either manner  
8 you propose.

9 The term "contribution" includes "anything of value"  
10 given for the purpose of influencing an election, such as  
11 in-kind contributions of goods or services. 11 CFR  
12 100.7(a)(1) and (iii)(A). In-kind contributions include the  
13 difference between the usual and normal charge for goods or  
14 services and the amount charged the political committee. 11  
15 CFR 100.7(a)(1)(iii)(A). "Usual and normal" charge means the  
16 price of those goods at that time in the market from which  
17 they ordinarily would have been purchased. 11 CFR  
18 100.7(a)(1)(iii)(B).

19 Contributions by individuals to a candidate's  
20 authorized committee are limited to \$1,000 per election. 2  
21 U.S.C. §441a(a)(1)(A). Commission regulations provide,  
22 however, that a candidate (other than one who receives public  
23 funding) may make unlimited expenditures from his personal  
24 funds, including contributions to his authorized committee to  
25 retire campaign debts. 11 CFR 110.10(a). Advisory Opinion  
26 1984-60. Since the items the Committee will use for  
27 fundraising purposes are owned by you (the former candidate),  
28 you may donate them to the Committee without being subject to  
29 the limits on contributions at 2 U.S.C. §441a. See Advisory  
30

3 Opinion 1990-9.<sup>1/</sup>

4 You propose selling the books to the Committee at a  
5 price equal to the printing costs. This will result in an  
6 in-kind contribution to the Committee from you in the amount  
7 of the difference between that price and the present market  
8 value of the books, assuming the latter amount is higher.  
9 (This latter price may vary depending on whether you sell all  
10 these items in bulk to the Committee or whether you sell them  
11 as needed.)<sup>2/</sup>

12 The Act provides that the candidate and the campaign  
13 committee may not convert excess campaign funds to the  
14 personal use of the candidate or any other person. 2 U.S.C.  
15 §439a; 11 CFR 113.2(d). If the price that the Committee will  
16 pay to you is greater than the amount that the books would  
17 sell for in the market at the time of the sale to the  
18 Committee, then such excess payments would improperly augment  
19 the amount of funds you derive from the sale. See Advisory  
20 Opinions 1995-8 and 1994-8. This situation would amount to  
21 personal use of campaign funds, unless the excessive amount  
22 is deducted from the amount of the debt that the Committee

---

23 <sup>1/</sup> In determining whether an in-kind contribution results  
24 from the sale of items to a committee to be used for its  
25 fundraising, the Commission has also addressed whether such a  
26 sale is in the ordinary course of the vendor's business,  
e.g., whether certain terms of payment other than the price  
are made available to nonpolitical customers on an equal  
basis. See Advisory Opinion 1990-19. Since you are the  
owner of the items, this concern does not arise in connection  
with their sale to the Committee.

27 <sup>2/</sup> The amounts of any in-kind contributions made by you  
28 should be reported as contributions from you and as  
29 expenditures by the Committee. 11 CFR 104.13(a)(1) and (2).  
30

3 owes to you.<sup>3/</sup>

4 The Committee may sell the books to persons for any  
5 price it wishes in order to raise funds to pay campaign  
6 debts. The entire amount paid by a purchaser will be a  
7 contribution to the Committee. 11 CFR 100.7(a)(2). Such  
8 payments will be subject to the contribution limitations and  
9 may not be made in any amount by any person or entity that is  
10 covered by the prohibitions of the Act. 2 U.S.C. §§441a,  
11 441b, 441c, 441e, and 441f.

12 In soliciting purchases of the book, the Committee must  
13 inform the purchasers that they will be contributors under  
14 the Act. In addition, Committee solicitations for such a  
15 purchase that are made through direct mail, or other form of  
16 general public political advertising, should contain a proper  
17 disclaimer stating the Committee name and that the Committee  
18 paid for the solicitation.<sup>4/</sup> 2 U.S.C. §441d(a)(1); 11 CFR  
19 110.11(a)(1)(i). See Advisory Opinions 1992-24 and 1989-21.

20 Assuming you do not wish to become a candidate for the  
21 1996 election cycle, you should instruct each purchaser  
22 (contributor) to indicate that each contribution is made for  
23 either the 1990 primary or general election debt, and they  
24 should so state on the contribution check. In the

---

25 <sup>3/</sup> It should be noted that the Commission has no knowledge  
26 of the market value of the books.

27 <sup>4/</sup> If other persons pay directly for the Committee's  
28 solicitations, the disclaimer needs to reflect that fact, and  
29 such persons would be making in-kind contributions to the  
30 Committee. 2 U.S.C. §441d(a)(2); 11 CFR 110.11(a)(1)(ii).

3 alternative, you may also provide each purchaser with a form  
4 which would be signed by the contributor and would designate  
5 the contribution for the particular election. See 2 U.S.C.  
6 §431(2); 11 CFR 100.3(a) and 110.1(b)(2) and (4). See  
7 Advisory Opinion 1990-30. Contributions may be made with  
8 respect to a past election only to the extent that the  
9 contribution does not exceed net debts outstanding with  
10 respect to that election. See 11 CFR 110.1(b)(3)(i)-(iv).

11 Since the Committee has no cash on hand, the Commission  
12 assumes that you or someone else will pay for solicitation  
13 costs, including any solicitation mailings or advertisements  
14 and forms for contributor designations. Payment from your  
15 personal funds would be an in-kind contribution that may be  
16 made without limit. You also have the option of treating  
17 your payments as loans made by you to the Committee. Payment  
18 by others would be subject to the limits and prohibitions of  
19 the Act. The Commission also cautions that any arrangement  
20 with a vendor or other provider of services in connection  
21 with the solicitation must entail payment of the usual and  
22 normal charge and must be within the vendor's ordinary course  
23 of business. See footnote 1.

24 Finally, the Commission notes that the Committee's sale  
25 of all the books to donors would possibly generate  
26 contributions that exceed the amount the Committee owes to  
27 you. The Committee may not pay you any amount in excess of  
28 the Committee debt owed to you because such an overpayment  
29 would be a prohibited conversion of campaign funds to your  
30

3 personal use. See 2 U.S.C. §439a; 11 CFR 113.2(d). The  
4 amount the Committee may pay to you is the outstanding loan  
5 amount, plus the amount you charge the Committee for your  
6 books (in accordance with this opinion), and any solicitation  
7 costs you pay if you choose to treat them as a Committee  
8 debt.

9 The Commission expresses no opinion as to any tax  
10 ramifications of the proposed transactions, since those  
11 issues are outside its jurisdiction.

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

16 Sincerely,

17 Danny L. McDonald  
18 Chairman

19 Enclosures (AOs 1995-8, 1994-8, 1992-24, 1990-30, 1990-19,  
20 1990-9, 1989-21, and 1984-60)  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30