



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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November 9, 1995

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan M. Levin
Senior Attorney

Subject: Draft AO 1995-38

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for November 16, 1995.

Attachment

AGENDA ITEM
For Meeting of: NOV 16 1995

DRAFT

ADVISORY OPINION 1995-38

Jeffrey C. Smith, President
Washington Policy Associates, Inc.
1414 Prince Street
Suite 375
Alexandria, VA 22314

Dear Mr. Smith:

This responds to your letter dated October 12, 1995, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the operations of a non-connected political committee.

You state that a number of private individuals, including you, wish to establish a non-connected political committee to support candidates of both parties for Federal office. The committee may be named the "Entrepreneurs Fund" ("the Committee"), and you will be its treasurer. The Committee will solicit contributions from the general public and will contribute to candidates who support policies favorable to entrepreneurs.

The Committee will hire Washington Policy Associates, Inc. ("WPA") to provide management and fundraising services and administrative support on a monthly retainer basis. WPA is an association management firm, providing management services to non-profit trade associations, professional societies, and other groups. These clients are completely separate from WPA and retain WPA under written agreement.

You are WPA's president, and it has two other employees. You state that WPA's arrangement with the Committee "would be

3 exactly the same as the one WPA has with its separate trade
4 association clients, where WPA acts as manager, but none of
5 WPA's employees are the client's employees." WPA would not
6 provide any contributions or free services to the Committee.

7 You ask whether your proposal is permissible under the
8 Act. The focus of your concern appears to be the ability of
9 your company to serve as a vendor of services to the
10 Committee even though you are the Committee treasurer.

11 Preliminarily, the Commission notes your intention that
12 the Committee will function as a non-connected committee, and
13 that WPA will not be a connected organization under the Act.
14 See 2 U.S.C. §431(7) and 11 CFR 100.6(a); see also 2 U.S.C.
15 §441b(b)(2)(C) and 11 CFR 114.1(a)(2)(iii). Your description
16 of the relationship between the two entities indicates this
17 to be the case. You have stated that you are one of several
18 private individuals, presumably unassociated with WPA,
19 establishing the Committee. In addition, the proposed
20 arrangement as to the Committee's payment for WPA's services
21 indicates that WPA will not financially support the
22 Committee. See Advisory Opinion 1991-37 and 1984-12.

23 There is nothing in the Act or Commission regulations
24 precluding a corporation that is owned or controlled by a
25 person who is also an officer of, or closely associated with,
26 a political committee from functioning as a vendor of goods
27 or services to that committee. On a number of occasions, the
28 Commission has permitted a candidate-owned corporation to
29 serve as a vendor or lessor to the committee as long as the
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3 committee pays the usual and normal charge for the goods or
4 services. Advisory Opinions 1995-8, 1994-8, and 1992-24.^{1/}
5 In addition, the Commission has permitted an incorporated
6 accounting firm headed by a treasurer of a political
7 committee to provide services to that committee. Advisory
8 Opinion 1991-37.

9 In order to avoid receiving an in-kind corporate
10 contribution, the Committee must pay the usual and normal
11 charge for the services provided by WPA, i.e., or the hourly
12 or piecework charge for the services at a commercially
13 reasonable rate prevailing at that time. 2 U.S.C.
14 §441b((b)(2); 11 CFR 114.1(a)(1), and 100.7(a)(1)(iii)(A) and
15 (B). The Commission assumes that the fees under the monthly
16 retainer agreement will include the usual and normal charges
17 for all the services provided. If WPA extends credit to the
18 Committee for services not yet paid for, such an extension
19 must be in the ordinary course of WPA's business and under
20 terms substantially similar to extensions of credit to
21 nonpolitical debtors that are of similar risk and size of
22 obligation. 11 CFR 116.3(b) and (c).

23 Based on the foregoing, the Commission concludes that
24 your proposal is permissible under the Act. The Commission
25 expresses no opinion regarding the tax ramifications of your
26 proposal because these issues are not within its

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1/ Commission regulations, however, do not permit the
28 leasing of any part of the residence of a candidate or family
29 member to an authorized committee. 11 CFR
30 113.1(g)(1)(i)(E)(1).

3 jurisdiction.

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

8 Sincerely,

9
10 Danny L. McDonald
Chairman

11 Enclosures (AOs 1995-8, 1994-8, 1992-24, 1991-37, and
12 1984-12)
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