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FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 15, 1996

AGENDA ITEM
For Meeting of: AUG 22 1996

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 1996-29

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for August 22, 1996.

Attachment

DRAFT

1 ADVISORY OPINION 1996-29

2
3 Stanley R. de Waal, C.P.A.
4 De Waal, Keeler & Company, P.C.
5 257 East 200 South #950
6 Salt Lake City, Utah 84111

7
8 Dear Mr. de Waal:

9
10 This responds to your letter dated June 24, 1996, requesting an advisory opinion
11 on behalf of Chris Cannon for Congress, Inc. concerning the application of the Federal
12 Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to
13 the attribution of in-kind contributions to more than one election.

14 Chris Cannon for Congress, Inc. ("the Committee") is the principal campaign
15 committee of Chris Cannon for election in 1996 to the House of Representatives from the
16 Third District of Utah. You are the Committee's treasurer. Mr. Cannon ran for the
17 Republican nomination at a State Republican convention on May 4. (All dates herein are
18 in 1996.) He failed to receive the nomination at the convention, where no candidate
19 received the requisite number of delegate votes to obtain the nomination, but gained the
20 nomination in the primary held on June 25.

21 You state that, on March 29, the Committee received in-kind contributions of
22 used computer equipment, totaling \$1,850 from Larry Lofgreen, \$1,850 from Vikki
23 Lofgreen, and \$1,300 from Roger Kartchner.¹ The Committee's April Quarterly report
24 disclosed in-kind contributions of computer equipment on that date in the following
25 increments: (1) from Larry Lofgreen -- \$1,000 for the convention and \$850 for the
26 primary; (2) from Vikki Lofgreen -- \$782.48 for the convention, \$1,000 for the primary,
27 and \$67.52 for the general election; and (3) from Roger Kartchner -- \$1,000 for the
28 convention and \$300 for the primary.

29 You state that the equipment was "independently appraised, and determined to
30 have a useful life of at least two years." The Committee is presently using the equipment

¹ The Committee's April Quarterly also discloses an in-kind contribution of \$217.52 in "computer supplies" from Vikki Lofgreen on February 1 which, like the equipment contribution of \$782.48, was designated for the convention. Her total of in-kind contributions for the convention was \$1,000, and her total of in-kind contributions disclosed on this report was \$2,067.52.

1 and will use it in the future. You note that the Committee received from each contributor
2 a designation to allocate the contribution over the several elections in the 1996 cycle.
3 You state that the Committee “allocated [the contribution] as specified by the
4 contributor” because the equipment would not be consumed at the time of receipt, but
5 would last through the life of the campaign and beyond. The Committee concluded that
6 it should be able to “allocate the value over future elections while the equipment is still
7 being used.”

8 The Committee asks whether the computer equipment “is considered to be
9 consumed” (1) at the time of receipt with any value in excess of \$1,000 being paid for by
10 the Committee or otherwise compensated; or (2) over a specific time period so that the
11 fair market value, if in excess of \$1,000, can be designated to several elections.

12 Contributions by an individual to the authorized committees of a Federal
13 candidate are limited to \$1,000 per election. 2 U.S.C. §441a(a)(1)(A). Under the Act and
14 Commission regulations, the term “contribution” includes a “anything of value” given for
15 the purpose of influencing a Federal election, such as in-kind contributions of goods or
16 services. 2 U.S.C. §431(8)(A)(i); 11 CFR 100.7(a)(1) and 100.7(a)(1)(iii)(A). The
17 provision of any goods or services without charge or at a charge that is less than the usual
18 and normal charge for such goods or services is a contribution. The amount of the
19 contribution is the difference between the usual and normal charge for the goods and
20 services at the time of the contribution and the amount charged to the committee. 11 CFR
21 100.7(a)(1)(iii)(A). For goods, the usual and normal charge is defined as the price of
22 those goods in the market from which they ordinarily would have been purchased at the
23 time of the contribution. 11 CFR 100.7(a)(1)(iii)(B). Thus, an individual’s contribution
24 for a single election of computer equipment valued in excess of \$1,000 at the time of the
25 donation would be in excess of the limits of the Act.

26 Commission regulations, however, contemplate the ability of a contributor to
27 make a contribution of funds, prior to the primary, in excess of \$1,000 for an election
28 cycle, so long as that person specifically designates an amount for the general election
29 also. See 11 CFR 110.1(b)(2) and (b)(4); Advisory Opinions 1992-15, 1991-12, and
30 1988-41. To designate an amount for the general election, a contributor should clearly

1 indicate, on the check, money order, or other negotiable instrument, the particular
2 election for which the contribution is made. Alternatively, the contribution should be
3 accompanied by a writing signed by the contributor which clearly indicates the particular
4 election. 11 CFR 110.1(b)(4)(i) and (ii).² See Advisory Opinion 1990-30.

5 For contributions received prior to the primary date for the general election, the
6 committee must use an acceptable accounting method to distinguish between primary and
7 general election contributions, e.g., by designating separate accounts or the establishment
8 of separate books and records for each election. 11 CFR 102.9(e). In-kind contributions
9 are reportable as both contributions and expenditures. 11 CFR 104.13(a).

10 In-kind contributions of equipment with a long-term useful life such as an election
11 cycle, or perhaps beyond, are analogous to contributions of money. Just as money
12 contributions may be used or "consumed" over a period of time, and just as money
13 contributions designated for the general election will be used during the general election,
14 the computer equipment you describe will be used throughout all three elections in the
15 Utah election cycle³ and may perform functions related to each election. A contribution
16 of this type of equipment is distinguishable from in-kind contributions that are used only
17 for one particular election, such as non-exempt contributions of food or beverages
18 consumed by primary election day workers, or printing or mailing costs related to general
19 election events or fundraisers.⁴

² The regulations also provide an opportunity for written redesignations by the contributor in accordance with 11 CFR 110.1(b)(5). 11 CFR 110.1(b)(4)(iii).

³ As indicated above, Mr. Cannon has been a candidate in three elections during this cycle. Because the convention had the power to nominate a candidate (i.e., a candidate who received at least 70 percent of the votes cast would be nominated without having to run in a subsequent primary), the convention was an election with a separate contribution limit. Because no one received the requisite vote percentage at the convention, the party nominee was selected by a subsequent primary where a separate limit is also applicable. A third limit is applicable for the November general election. See Advisory Opinion 1992-25.

⁴ The Commission notes that Advisory Opinion 1986-17 restricted the use of money contributions designated for the general election to make expenditures prior to the primary. The opinion addressed the limited circumstances where it is necessary to make advance payments to vendors for goods and services that will be provided to the committee during the general election, and it did not permit the use of such contributions for expenditures to purchase goods or services to be used in both the primary and general elections. The opinion, however, did not consider the situation in which, as here, an individual makes an in-kind contribution of valuable equipment that, by its nature, could be used for a primary election and other purposes, although subject to the obligation of the donee committee to compensate the contributor by making a timely and sufficient refund for any use that, absent a refund, would result in an excessive contribution under 2 U.S.C. §441a. See 11 CFR 103.3(b)(3). See also footnote 5.

