

Summaries of Recent FEC Advisory Opinions

July 2004

Candidate Can Work as Consultant

On June 24, 2004, the FEC allowed a candidate for the U.S. House of Representatives from Texas to work as a consultant for a law firm during her candidacy. In Advisory Opinion 2004-17, the Commission allowed the candidate to receive compensation on an hourly basis "that will not exceed that paid to similarly qualified consultants who perform similar services." The compensation must be for "*bona fide* employment genuinely independent of" her candidacy. Given such a situation, the FEC ruled that the payments from the law firm would not be "contributions" under the Federal Election Campaign Act, as amended.

501(c)(4)'s Ad Would Be an "Electioneering Communication"

At its meeting on June 24, 2004, the FEC stated that a proposed ad by a 501(c)(4) social welfare group about its planned documentary film would, under certain circumstances, be prohibited by the "electioneering communication ban." The ads would be prohibited corporate advertisements if they feature a candidate for the president of the United States and air on television or radio within 30 days of a primary, within 30 days of the pertinent national political party nominating convention or within 60 days of the general election on November 2, 2004. For the latter two time periods, the blackout would be nationwide. The prohibition applied, according to the Commission, regardless of the purpose of the ads, which in this case was to advertise a documentary film produced by the 501(c)(4). The FEC chose not to address the applicability of the media exception to this activity.

Severance Package for Candidate

On April 30, 2004, the Federal Election Commission issued Advisory Opinion 2004-08 authorizing the American Sugar Cane League's

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(ASCL) severance package to its former president. The ASCL represents Louisiana sugar cane growers and processors. Its president and general manager, Charles Melancon, resigned on February 20, 2004, to become a candidate for the U.S. House of Representatives. The ASCL proposed a severance package that provided Mr. Melancon, who had worked 11 years for the ASCL, with 6 months to one year of salary and health benefits. The FEC decided that the ASCL could present Mr. Melancon with such a severance package because the ASCL's history of providing severance packages combined with Mr. Melancon's documented work record demonstrated that the package "is tied exclusively to services provided by him as a part of his *bona fide* employment." Secondly, the ASCL showed that the severance was not greater than warranted because it was comparable to packages received by other employees who had performed services similar to those of Mr. Melancon. The fact that the ASCL did not have a formal severance policy was not fatal in light of the organization's small size.