



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 8, 1978

AO 1977-68

Mr. Paul T. Moxley
Johnson, Durham, Moxley & McCullough
Continental Bank Building
Salt Lake City, Utah 84101

Re: Mr. Peter Cooke, Candidate for United States House of Representatives.

Dear Mr. Moxley:

This responds to your letter dated November 18, 1977, requesting an advisory opinion verifying that performance by Mr. Peter Cooke, Federal candidate, of his employment contract with Tracy Collins Bank and Trust (hereafter "the Bank") does not constitute a contribution or expenditure under the Federal Election Campaign Act of 1971, as amended ("the Act"), or any regulation of the Federal Election Commission.

Mr. Cooke's contract provides that he will devote a minimum of 40 hours weekly to the performance of services as a legislative lobbyist for the Bank. In return, he will receive a sum-certain yearly salary, paid bi-monthly, plus reimbursement for itemized out-of-pocket expenses incurred on behalf of the Bank and eligibility for fringe benefits that are available to other Bank employees on an employment level equivalent to that of Mr. Cooke. The contract further provides that Mr. Cooke will use no Bank facility in connection with any personal political activity as part of his minimum work week and will keep available for Bank inspection a log of political campaign-related telephone calls made from Cooke's office at the Bank. Cooke will promptly reimburse the Bank for costs, including any increased overhead, of any "occasional, isolated or incidental" use of any Bank facility in connection with personal political activity. If and when Cooke desires to spend a substantial part of his time in political campaign activities, he shall notify the Bank and will be granted indefinite leave without pay (and without fringe or other employment benefits) until such time, should the need for his services persist, as the Bank and Mr. Cooke agree to his reinstatement.

It is the opinion of the Commission that performance in accord with the terms of this contract would not constitute a contribution or expenditure under the Act or Commission regulations. This opinion, however, presumes that a bona fide employment relation exists between the parties for purposes genuinely independent of Mr. Cooke's candidacy, and that any compensation paid by the Bank to Mr. Cooke is exclusively in consideration of services

performed by him as the Bank's legislative lobbyist. See, inter alia, 2 U.S.C. 441b; 11 CFR 100.4 (particularly 100.4(a)(5)), 100.7 and 114.12(c).

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)
Thomas E. Harris
Chairman for the
Federal Election Commission