

# FEC Advisory Opinion Corner: FEC Addresses Two New Issues

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July 2013

Since May, the Federal Election Commission (FEC) has issued two advisory opinions of general interest to political parties, candidates and those who support them:

## **AO 2013-01: FEC Reaffirms “National Committee” Requirements**

In Advisory Opinion 2013-01, 1787 National Committee, Inc., had asked whether it qualified as the “national committee” of the 1787 Party. In concluding that it did not, the FEC explained that a national committee is an organization that operates a political party. A political party, in turn, is an “organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such . . . organization.” Since the 1787 Party had not yet placed any candidate for federal office on any ballot, it did not qualify as a political party, and the 1787 National Committee did not qualify as a national committee.

## **AO 2012-03: FEC Revisits Candidate Compensation**

In Advisory Opinion 2013-03, Erin Bilbray-Kohn, a potential candidate for the U.S. House of Representatives, asked whether she could serve as a paid consultant to a nonprofit corporation after becoming a federal candidate. Seven years ago, Bilbray-Kohn founded Emerge Nevada, a nonprofit entity dedicated to helping elect Democratic women to state and local offices in Nevada. She had served as the entity's executive director, but in anticipation of declaring her candidacy, she resigned and negotiated a position as consultant to the organization.

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The FEC approved this arrangement, emphasizing that Bilbray-Kohn's new role would not involve fundraising. This was an important point because federal candidates may not raise or spend funds in connection with any non-federal election unless the funds accord with the Federal Election Campaign Act's contribution limits and source restrictions. Even though Bilbray-Kohn anticipated giving advice to other candidates, she would not be soliciting, receiving or controlling funds for those candidates or for Emerge Nevada.

The FEC also advised that the consulting fees Bilbray-Kohn negotiated with Emerge Nevada would not be prohibited contributions to her as a candidate. Although payments of compensation to a candidate are generally treated as contributions, the federal rules make an exception for compensation that (1) derives from bona fide employment that is genuinely independent of the candidacy, (2) is exclusively in consideration for services provided by the employee as part of her employment and (3) does not exceed the compensation that would be paid to a similarly qualified person for the same work over the same period. Bilbray-Kohn represented that her new position drew on both her experience developing and running Emerge Nevada's training program and her expertise with Nevada politics—factors unrelated to her candidacy for federal office. Further, her reduced compensation would correspond to her abridged duties as a consultant. Lastly, the advisory opinion request represented that her compensation would be no more than Emerge Nevada pays any other consultant with Bilbray-Kohn's experience.

Bilbray-Kohn announced her candidacy for Nevada's Third Congressional District on July 1.