

K. Michael Conaway, Texas
Chairman

Linda T. Sánchez, California
Ranking Member

Charles W. Dent, Pennsylvania
Patrick Meehan, Pennsylvania
Trey Gowdy, South Carolina
Susan W. Brooks, Indiana

Pedro R. Pierluisi, Puerto Rico
Michael E. Capuano, Massachusetts
Yvette D. Clarke, New York
Ted Deutch, Florida



ONE HUNDRED THIRTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

July 22, 2014

Thomas A. Rust
Staff Director and Chief Counsel

Joanne White
Administrative Staff Director

Jackie M. Barber
Counsel to the Chairman

Daniel J. Taylor
Counsel to the Ranking Member

1015 Longworth House Office Building
Washington, D.C. 20515-6328
Telephone: (202) 225-7103
Facsimile: (202) 225-7392

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives
H-204, The Capitol
Washington, DC 20515

Dear Colleague:

This responds to your letter dated June 26, 2014, seeking permission to serve on the host committee for a fundraising reception benefitting Americans United for Change (AUC). Subject to the guidance contained in this letter, it would be permissible for you to serve as a host committee member of AUC's fundraising reception.

FACTUAL BACKGROUND

According to your letter, and information provided by Brad Woodhouse, president of AUC, the background on this matter is as follows. You are a Member of the House of Representatives. You have been offered an unpaid position as a host committee member for a fundraising reception sponsored by AUC, a social welfare organization organized under § 501(c)(4) of the Internal Revenue Code.

According to Mr. Woodhouse, the fundraising reception will serve a dual purpose to also celebrate the retirement of Representative George Miller and Senator Tom Harkin. The event will occur on July 29, 2014, at Sonoma Restaurant. AUC will provide each contributor with a ticket to the event, and the classes of contributors are as follows: Guest, \$250; Supporter, \$500; Friend, \$1,000; Host, \$2,500; Chair, \$5,000; and Patron, \$10,000. The event's host committee will consist of approximately 15 Members of the House and Senate. The host committee members' service will be honorary in nature, and no member will receive a direct personal benefit as a result of their service. Host committee members will neither solicit to raise funds for the event, nor will they use House resources to subsidize the event.

LEGAL BACKGROUND & ANALYSIS

Serving on the Host Committee

While no single statutory provision or rule of the House of Representatives specifically prohibits Members from holding an outside position, general ethical standards and rules do restrict undertakings inconsistent with congressional responsibilities. Because even the appearance of a conflict may adversely affect public perceptions and confidence, a close examination must be made into whether such outside work is compatible with one's service as a Member. A Member should also exercise caution before accepting a position on the board of an organization that is subject to the oversight of a committee on which the Member sits.¹

As a general matter, Members, as well as staff paid at or above the senior staff rate,² are prohibited from serving for compensation as an officer or board member of any entity.³ However, Members and senior staff, as well as House employees earning below the senior level, may serve as a member of the board of directors of a nonprofit organization on an uncompensated basis, subject to certain limitations and requirements, which are discussed below.

House Rule 23, clause 3, provides that a Member "may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress." Similarly, the Code of Ethics for Government Service, which applies to the House of Representatives, calls on government officials never to dispense special favors or privileges, nor to accept any favors or benefits "under circumstances which might be construed by reasonable persons as influencing the performance" of official duties. These standards of ethical conduct prohibit the use of a position of influence for personal gain, or for providing special advantage to an outside organization with which a Member is affiliated.

Furthermore, various provisions of law and the House rules require an absolute separation between one's position with the House and any outside employment. In this regard, official House resources – including the office telephones, computers, facsimile machines and other equipment, and office supplies – may not be used to perform the work of any outside organization, or to assist a Member in performing the services of any outside position. Funds may be used only for the purposes appropriated, and regulations of the Committee on House Administration further emphasize that the official allowance is to be used for official House business.⁴ Your service on the AUC host committee would not constitute the performance of House business, and thus you may not use any House resources in the performance of your host committee duties.

¹ 2008 House Ethics Manual at 237.

² The senior staff rate for calendar year 2014 is \$120,749.

³ See 5 U.S.C. app. 4 § 502(a)(4); House Rule 25, clause 2(d).

⁴ 31 U.S.C. § 1301(a); see generally Comm. on House Admin., *Members' Congressional Handbook*.

Conversely, the House rules prohibit unofficial office accounts, and prevent Members and staff from accepting privately-financed or voluntary services to supplement official activities.⁵ Under the rule, for example, the equipment, supplies, or other resources of a private organization – including any organization with which a Member is affiliated – may not be used for the performance of congressional business, and staff of such an organization may not be used to perform duties that are normally performed by congressional staff. This rule would prohibit you from using resources of AUC to assist you in the work of your congressional office.

Solicitation on Behalf of a Charitable Organization

A House Member may not solicit or accept anything of value from a person seeking official action from the House, doing business with the House, or having interests that may be substantially affected by the performance or nonperformance of that Member or employee's official duties.⁶ The statute covers the solicitation of "anything of value," regardless of whether the official personally benefits from it.⁷ Thus, Members and House employees are generally prohibited from soliciting not only for themselves, but also on behalf of other individuals or entities. The statute does not apply to political solicitations.⁸

The statute authorizes this Committee to issue rules to implement the statute and to provide for "reasonable exceptions as may be appropriate."⁹ In no case may a Member accept a gift in return for being influenced in the performance of any act.¹⁰ Pursuant to its statutory authority, the Committee has established a general exception to permit Members and House employees to solicit on behalf of organizations qualified under the IRC § 170(c).¹¹ This includes organizations under IRC § 501(c)(3), but it does not include nonprofits established under other sections of the IRC.

The Committee has determined that solicitations on behalf of entities other than those qualified under IRC § 170(c) are to be decided as they arise. Additionally, the general permission granted by the Committee does not extend to activities on behalf of an organization, regardless of tax status, that was established or is controlled by Members of Congress.

All charitable solicitations permitted by the Committee are subject to the following restrictions:

⁵ House Rule 24, cls. 1-3.

⁶ 5 U.S.C. §§ 7353(a)(1) and (2).

⁷ *Id.* House Comm. on Standards of Official Conduct, "Solicitation Under the Ethics Reform Act of 1989" (Oct. 9, 1990) (1990 Committee Solicitation Memo).

⁸ *See* 136 Cong. Rec. H1647 (daily ed. Apr. 24, 1990) (regarding technical corrections to the Ethics Reform Act of 1989); 1990 Committee Solicitation Memo.

⁹ 5 U.S.C. § 7353(b)(1).

¹⁰ *Id.*

¹¹ *See* 1990 Committee Solicitation Memo; 2008 House Ethics Manual at 348.

- No official resources may be used. Such official resources include House staff while working on official time, telephones, office equipment and supplies, and official mailing lists.¹²
- No official endorsement by the House of Representatives may be expressed or implied. This means no letterhead or envelope used in a solicitation may bear the words “Congress of the United States,” “House of Representatives,” or “Official Business,” nor may the letterhead or envelope bear the Great Seal of the United States, the Congress, or the House.¹³ It is permissible for Members to identify themselves as a Member of Congress, Congressman, Congresswoman, Representative, or by using their leadership title. However, staff have no personal titles and therefore should make no reference to their House employment in any solicitation.
- No direct personal or financial benefits may result to the soliciting official.
- Regulations of the House Office Building Commission generally prohibit soliciting and other non-governmental activities in facilities of the House of Representatives.¹⁴
- No suggestion may be made either that donors will be assisting you in the performance of your official duties or that they will receive favorable consideration from you or your office in official matters.
- Registered lobbyists or agents of foreign principals may not be targeted in such a solicitation.¹⁵ Thus, *no* employee of a lobbying firm should be targeted in a solicitation. However, it is permissible to solicit a company, association, or other entity that employs registered lobbyists to lobby only for itself or its members if the solicitation is sent to an officer or employee who is not a lobbyist.

Approval by the Committee of an exception to the solicitation ban also serves as approval of an exception to the statute’s ban on the acceptance of any gifts to the proposed beneficiary resulting from the solicitation that may be attributable to the soliciting House Member or employee.¹⁶ Where a soliciting House Member or employee has complied fully with the Committee’s guidance with respect to a permissible solicitation, no gifts to the proposed beneficiary of the solicitation will be attributed to the soliciting House Member or employee. Authorized sanctions for violations of the statute include “appropriate disciplinary and other

¹² See 31 U.S.C. § 1301(a); *see generally* Comm. on House Admin., *Members’ Congressional Handbook*.

¹³ See House Rule 23, cl. 11; 18 U.S.C. § 713.

¹⁴ House Building Comm’n, *Rules and Regulations Governing the House Office Buildings, House Garages and Capitol Power Plant* (Feb. 1999).

¹⁵ A charitable contribution made by a federal registered lobbyist or foreign agent on the basis of a designation, recommendation, or specification of a Member or House employee is a prohibited gift to that Member or House employee. See House Rule 25, cl. 5(e)(2).

¹⁶ 5 U.S.C. § 7353(b)(1).

remedial action in accordance with any applicable laws, . . . and rules or regulations.”¹⁷

Based on the facts presented here, the Committee finds that it would be reasonable and appropriate to provide for an exception to the solicitation ban in this case. Subject to the rules discussed above, you are permitted to lend your name and assist in fundraising efforts for the AUC’s fundraising reception. You may only participate in such fundraising events in your personal capacity, and you may not use official House resources or suggest an “official” endorsement of the event, the entity organizing the event or the beneficiaries of the event’s fundraising.

Acceptance of Free Attendance at a Reception

House Rule 25, clause 5 (the gift rule) prohibits the acceptance of any gifts, except as specifically provided in the rule. The rule permits a Member, officer, or employee, along with a spouse or dependent, to accept a sponsor’s unsolicited offer of free attendance at a reception.¹⁸ This exception contains an exception for food or refreshments of nominal value offered other than as a part of a meal, such as the type of food typically available at receptions. The event you describe appears to fall into this category. Therefore, you may accept the invitation to attend.

Members and staff may accept the invitation of free attendance to a reception event only from a sponsor of the event. The Committee has defined the term “sponsor” to mean the person or entity that is primarily responsible for organizing the event, in this case, AUC. It does not include entities that are merely providing financial underwriting for the event. The term “free attendance” may include a waiver of an entrance fee, the provision of local transportation, and entertainment furnished to all attendees as an integral part of the event. It does not include lodging, entertainment collateral to the event, or food or refreshments taken other than in a group setting with all or substantially all other attendees. Thus, Members, officers and staff, as well as an accompanying spouse or child, may accept an offer of free attendance from AUC.

“Free attendance” also does not include a gift item or gift bag that may be provided to other participants. Such a gift bag may be acceptable under a separate provision of the gift rule, provided the aggregate value of all the items in it is less than \$50, the donor does not employ a lobbyist or registered foreign agent, and the aggregate annual value of such gifts received from the donor remains less than \$100.

LIMITATIONS

The response above constitutes an advisory opinion concerning the application of House Rules 23, 24, and 25; 5 U.S.C. § 7353; 5 U.S.C. § 203 and 31 U.S.C. § 1301. The following limitations apply to this opinion:

¹⁷ *Id.*

¹⁸ *See* House Rule 25, cl. 5(a)(3)(U).

- This advisory opinion is issued only to Representative Nancy Pelosi, the requestor of this opinion. This advisory opinion cannot be relied upon by any other individual or entity.
 - This advisory opinion is limited to the current provisions and interpretation of the House rules and federal statutes specifically noted above. No opinion is expressed or implied herein regarding the application of any other federal, state, or local statute, rule, regulation, ordinance, or other law that may be applicable to the proposed conduct described in this letter.
-
- This advisory opinion will not bind or obligate any entity other than the Committee on Ethics of the United States House of Representatives.
 - This advisory opinion is limited in scope to the specific proposed conduct described in this letter, the specific facts represented to the Committee, and the understanding of those facts to the extent indicated in this letter, and does not apply to any other conduct or facts, including that which appears similar in nature or scope to that described in this letter. Should this letter mis-state any facts in this matter, the opinion and advice may no longer apply and you should inform the Committee as soon as possible to determine if the advice and opinion in this letter applies to the accurate factual basis.

The Committee will take no adverse action against you in regard to any conduct that you undertake, or have undertaken, in good faith reliance upon this advisory opinion, so long as you have presented a complete and accurate statement of all material facts relied upon herein, and the proposed conduct in practice conforms with the information you provided, as addressed in this opinion.

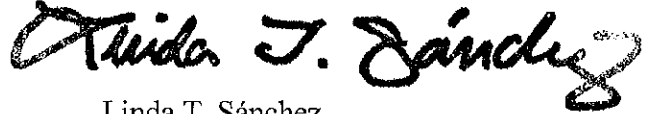
Changes or other developments in the law (including, but not limited to, the Code of Official Conduct, House rules, Committee guidance, advisory opinions, statutes, regulations, or case law) may affect the analysis or conclusions drawn in this advisory opinion. The Committee reserves the right to reconsider the questions and issues raised in this advisory opinion and to rescind, modify, or terminate this opinion if required by the interests of the House. However, the Committee will rescind an advisory opinion only if relevant and material facts were not completely and accurately disclosed to the Committee at the time the opinion was issued. In the event that this advisory opinion is modified or terminated, the Committee will not take any adverse action against you with respect to any action taken in good faith reliance upon this advisory opinion so long as such conduct or such action was promptly discontinued upon notification of the modification or termination of this advisory opinion.

If you have any further questions, please contact the Committee's Office of Advice and Education at extension 5-7103.

Sincerely,



K. Michael Conaway
Chairman



Linda T. Sanchez
Ranking Member

KMC/LTS:re