MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson
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Subject: Draft AO 2013-05 (Gallegly)

July 18, 2013

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on July 24, 2013.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to http://www.fec.gov/law/draftaos.shtml.

Attachment
Dear Representative Gallegly:

We are responding to your advisory opinion request concerning the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to your use of campaign funds to pay for the temporary storage of your officeholder and campaign materials after your retirement from federal office. The Commission concludes that you may use campaign funds to pay these expenses because they are ordinary and necessary expenses incurred in connection with your duties as a federal officeholder.

Background

The facts presented in this advisory opinion are based on your letter received on June 10, 2013, email received on June 26, telephone conversations with Commission staff, and information publicly available on the Commission’s website.

In January 2013, you retired from Congress after serving 26 years as a member of the U.S. House of Representatives. Your principal campaign committee no longer accepts contributions, owes no debts, and recently reported a cash-on-hand balance of $528,257.¹

You have hundreds of boxes of officeholder and campaign documents in storage from your years in Congress. Most of these materials will eventually be sent to

California Lutheran University for archiving. To ensure that the materials are properly identified for archiving, you and others have been reviewing them since your retirement, but your review has been interrupted for health reasons. To date, you have reviewed only about half of the material. Also in storage are a few personal items that will be archived from your Washington, D.C. office, as well as campaign furniture, books, and memorabilia that you intend to give away or otherwise dispose of. You have been paying the usual and normal charge of approximately $300 per month to store the materials in a commercial, public storage facility and will continue to do so. You plan to dispose of all of these items by the end of calendar year 2013.

**Question Presented**

_May you use campaign funds to pay costs associated with the temporary storage of officeholder and campaign materials pending their final disposition after your retirement from federal office?_

**Legal Analysis and Conclusion**

Yes, you may use campaign funds to pay costs associated with the temporary storage of officeholder and campaign materials pending their final disposition after your retirement from federal office. The cost of such temporary storage is an ordinary and necessary expense incurred in connection with your duties as a holder of federal office and is not personal use of campaign funds.

The Act identifies six categories of permissible uses of contributions accepted by a federal candidate. 2 U.S.C. § 439a(a); see also 11 C.F.R. Part 113. These permissible uses of campaign funds include paying “ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office,” as well as “any
other lawful purpose,” but not conversion to “personal use.” 2 U.S.C. § 439a(a)(2), (6),
(b); see also 11 C.F.R. § 113.2(a), (e). Conversion to personal use occurs when funds in
a campaign account are used “to fulfill any commitment, obligation or expense . . . that
would exist irrespective of the candidate’s election campaign or . . . duties as a holder of
Federal office.” 2 U.S.C. § 439a(b)(2); see also 11 C.F.R. § 113.1(g).

The Commission’s regulations provide that the costs of winding down the office
of a former federal officeholder for a period of six months after he or she leaves office
are ordinary and necessary expenses. 11 C.F.R. § 113.2(a)(2). This six-month winding
down period “acts as a safe harbor” and is intended “to ensure that former officeholders
have ample time to close down their offices.” See Expenditures; Reports by Political
Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7873 (Feb. 9, 1995).

It “does not preclude a former officeholder who can demonstrate that he or she has
incurred ordinary and necessary winding down expenses more than six months after
leaving office from using campaign funds to pay those expenses.” Id. Such winding-
down costs include the “necessary administrative costs” of terminating a campaign or
congressional office, such as office space rental, staff salaries and office supplies. See
11 C.F.R. §§ 110.1(b)(3)(ii), 116.1(a).² The Commission has previously concluded that
the cost of archiving and storing campaign papers, files, and other materials is an
ordinary and necessary expense incurred by a former Member of Congress in winding
down campaign activity. Advisory Opinion 1993-06 (Panetta); see also Advisory

Opinion 1996-14 (de la Garza) (authorizing use of campaign funds to pay costs of

² See also 11 C.F.R. §§ 9004.11(a) (winding down costs for candidates eligible for public funding include
necessary administrative costs associated with ending a campaign, such as office space rental, staff salaries,
and office supplies), 9034.11(a) (same), 9004.9(a)(4) (winding down costs for candidates eligible for public
funding include storage and certain other expenses), 9034.5(b)(2) (same).
winding down federal office, including costs to ship items from congressional office to
home state).

Like the storage and shipping expenses in these earlier advisory opinions,
expenses incurred to store your officeholder and campaign materials in a commercial,
public storage facility pending their final disposition is an ordinary and necessary
expense incurred in winding down your campaign and congressional offices. Because
these expenses would not exist irrespective of your election campaigns and your duties as
a federal officeholder, the use of campaign funds to pay them does not constitute personal
use. And the facts that you have provided regarding the duration of your time in
Congress and the attendant length of your archival review indicate that the cost to store
your officeholder and campaign materials for up to one year after you retired from federal
office is an ordinary and necessary winding-down expense of a federal officeholder with
your extensive tenure. Accordingly, the Commission concludes that your use of
campaign funds to pay costs associated with the temporary storage of these materials
would not be prohibited by the Act or Commission regulations.3

This response constitutes an advisory opinion concerning the application of the
Act and Commission regulations to the specific transaction or activity set forth in your
request. See 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in
any of the facts or assumptions presented, and such facts or assumptions are material to a
conclusion presented in this advisory opinion, then the requestor may not rely on that
conclusion as support for its proposed activity. Any person involved in any specific

3 Because your use of campaign funds to pay these storage expenses is otherwise lawful and does not constitute personal use, it is also permissible under 2 U.S.C. § 439a(a)(6) and 11 C.F.R. § 113.2(e).
transaction or activity which is indistinguishable in all its material aspects from the
transaction or activity with respect to which this advisory opinion is rendered may rely on
this advisory opinion. See 2 U.S.C. § 437f(c)(1)(B). Please note that the analysis or
conclusions in this advisory opinion may be affected by subsequent developments in the
law including, but not limited to, statutes, regulations, advisory opinions, and case law.
The cited advisory opinions are available on the Commission’s Web site at www.fec.gov,
or directly from the Commission’s Advisory Opinion searchable database at

On behalf of the Commission,

Ellen L. Weintraub
Chair