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United States Senate

SELECT COMMITTEE ON ETHICS

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September 18, 2002

Tina VanBrakle
Congressional Affairs Officer
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Ms. VanBrakle:

This responds to your August 28, 2002 facsimile requesting comments on proposed Federal Election Commission (FEC) regulations for the Bipartisan Campaign Reform Act (BCRA), codified at 2 U.S.C. § 439a. You ask for the Committee's view about whether Congress intended in the BCRA to bar the use of campaign funds for fact-finding trips which are nonetheless part of a Member's duties as a federal officeholder.

The new 2 U.S.C. § 439a(a)(2) provides that campaign funds may be used "for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal Office." In our view, this language clearly expresses the legislative intent to allow campaign funds to be used for a Senator's official expenses. Thus, it follows that through section 439a(a)(2), Congress intended to permit a Senator to use campaign funds for fact-finding trips that are part of his or her duties as a Federal officeholder. For your information, it is the longstanding practice of the Committee to defer the determination of whether a fact-finding trip is in connection with official duties to the supervising Senator (for the Senator and his or her staff), or the Senate officer in the case of travel by the officer's employees.

As you indicate, the BCRA also generally codified the FEC personal use regulations. The new 2 U.S.C. §439a provides that the personal use of campaign funds is prohibited. In particular, section 439a(b)(2) defines a prohibited personal use of campaign funds as one "used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the ... individual's duties as a holder of Federal office ...." Clearly, fact-finding travel - deemed connected to official duties by a Senator or Senate officer - would necessarily never exist "irrespective of the individual's duties as a holder of Federal office" because such fact-finding travel is made in connection with official duties of the Senator.

Although subsections 439a(b)(2)(A) through (I) provide a list of prohibited uses of campaign funds such as "a vacation or other noncampaign-related trip" found in subsection (b)(2)(E), those examples must be read in relation to the clear authorization in section (a)(2) to use campaign funds for expenses incurred in connection with an individual's duties as an officeholder and the "irrespective" test in section (b)(2). See e.g. Gustafson v. Alloyd Co. Inc., 513 U.S. 561, 568-572 (1995)(courts must construe statutes, not isolated provisions); See also, 2A Norman J. Singer, Sutherland Statues and Statutory Construction § 46.05 (6th ed. 2000)(each part or section should be construed in connection with every other part or section to produce a harmonious whole) . When read in relation to sections 439a(a)(2) and (b)(2), the subsection 439a(b)(2)(E) prohibition on using campaign funds for a "noncampaign related trip" clearly does not include officially connected fact-finding expenses. Indeed, to read the subsection (b)(2)(E) example of "a vacation or other noncampaign-related trip" to include official fact-finding trips would render the authorization to use such funds for official expenses in section (a)(2) and the "irrespective" test in section (b)(2) meaningless, a result not favored in the law.

Sincerely,

Harry Reid
Chairman

Pat Roberts
Vice Chairman