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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 18-21-A
AGENDA ITEM
For meeting of May 10, 2018

May 3, 2018

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS*
Acting General Counsel

Erin Chlopak *ERC*
Acting Associate General Counsel

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Assistant General Counsel

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Attorney

Subject: Draft AO 2018-06 (Liuba for Congress) Draft A

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 May 9, 2018.

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 <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2018-06

2

3 Ms. Liuba Grechen Shirley

4 Liuba for Congress

5 P.O. Box 69

6 Amityville, NY 11701

7

8 Dear Ms. Shirley:

DRAFT A

9 We are responding to your advisory opinion request concerning the application of the
10 Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission
11 regulations to your proposed use of campaign funds to pay for childcare expenses incurred
12 during your candidacy for federal office. The Commission concludes that your authorized
13 campaign committee may use campaign funds to pay for the childcare expenses described in
14 your request because such expenses would not exist irrespective of your candidacy.

15 **Background**

16 The facts presented in this advisory opinion are based on your letter received on April 3,
17 2018 (“the request” or “AOR”).

18 You are a candidate for the 2nd Congressional District of New York, and Liuba for
19 Congress serves as your principal campaign committee.¹ Prior to becoming a candidate for
20 federal office, you worked from home as a consultant, and cared for your young children full
21 time. Your husband works full time. Since you started campaigning, you have forgone your
22 income and hired a part-time caregiver for your children so that you are able to fulfill your
23 responsibilities as a federal candidate. You anticipate that as the primary election approaches,

¹ Commission records indicate that you filed your current Statement of Candidacy on April 3, 2018, and that Liuba for Congress filed its current Statement of Organization on February 7, 2018. *See* Liubov “Liuba” Grechen Shirley, Statement of Candidacy, FEC Form 2 (Apr. 3, 2018), <http://docquery.fec.gov/pdf/070/201804039097939070/201804039097939070.pdf>; Liuba for Congress, Statement of Organization, FEC Form 1 (Feb. 7, 2018), <http://docquery.fec.gov/pdf/954/201802079094263954/201802079094263954.pdf>.

1 you will require full-time care for your children, as well as additional childcare support on
2 evenings and weekends, so that you can devote the time necessary to run your campaign.

3 **Question Presented**

4 *May Liuba for Congress use campaign funds to pay for the childcare expenses described*
5 *in the request?*

6 **Legal Analysis and Conclusions**

7 Yes, Liuba for Congress may use campaign funds to pay for the childcare expenses
8 described in the request during the pendency of your campaign.

9 Under the Act and Commission regulations, an authorized committee may use its funds
10 for several specific purposes, including “ordinary and necessary expenses incurred in connection
11 with duties of the individual as a holder of Federal office,” and “any other lawful purpose” that
12 does not otherwise constitute conversion of campaign funds to “personal use.” *See* 52 U.S.C.
13 § 30114(a), (b); 11 C.F.R. §§ 113.1, 113.2. The Act and Commission regulations define
14 “personal use” as the use of campaign funds “to fulfill any commitment, obligation, or expense
15 of a person that would exist irrespective of the candidate’s election campaign” or duties as a
16 federal officeholder. 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

17 The Act and Commission regulations provide a non-exhaustive list of uses of campaign
18 funds that are *per se* personal use. 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i). For uses
19 of campaign funds not included on this list, the Commission determines, on a case-by-case basis,
20 whether the use is a prohibited “personal use,” *i.e.*, whether the expense would exist irrespective
21 of the candidate’s campaign or federal officeholder duties. 11 C.F.R. § 113.1(g)(1)(ii).

1 The Act and Commission regulations do not expressly address childcare expenses. The
2 Commission accordingly must determine whether the proposed use of campaign funds for certain
3 childcare expenses would exist irrespective of the candidate’s campaign for federal office. *Id.*

4 The Commission has previously considered the permissibility of using campaign funds to
5 pay for certain childcare expenses in more limited circumstances. In Advisory Opinion 1995-42
6 (McCrery), a federal candidate and his wife, who was “an integral part” of the candidate’s
7 campaign team, traveled extensively within the candidate’s congressional district for campaign
8 purposes, resulting in the need for “occasional” childcare for the couple’s young child. Advisory
9 Opinion 1995-42 (McCrery) at 1. The Commission concluded that it was permissible to use
10 campaign funds to pay for such occasional childcare because such expenses, in that case, would
11 be “incurred only as a direct result of campaign activity and would not otherwise exist.”
12 Advisory Opinion 1995-42 (McCrery) at 2; *see* 11 C.F.R. § 113.1(g).²

13 The Commission’s analysis and conclusion in Advisory Opinion 1995-42 (McCrery)
14 apply equally here. The request explains that you are the full-time caregiver for your young
15 children, and, because of your campaign activity, you will incur expenses for part-time or full-
16 time childcare. The fact that you seek to use campaign funds to pay for more than the
17 “occasional” childcare expenses approved of in Advisory Opinion 1995-42 (McCrery) does not
18 change the relevant question, which is whether such expenses would exist irrespective of the
19 candidate’s campaign or officeholder duties. The Commission concludes that the childcare

² The Commission was also asked about the permissibility of using campaign funds to pay for childcare expenses in 2008, however, the Commission lacked a quorum at that time to render any opinion. *See* Letter from Rosemary C. Smith to Todd Goldup, Advisory Opinion Request 2008-02 (Goldup) (Apr. 17, 2008) (advising requestor of Commission’s lack of quorum).

1 expenses described in your request, to the extent such expenses are incurred as a direct result of
2 campaign activity, would not exist irrespective of your election campaign, and thus may be
3 permissibly paid with campaign funds. *See* 52 U.S.C. § 30114(a)(1), (b); 11 C.F.R. § 113.1(g).

4 This response constitutes an advisory opinion concerning the application of the Act and
5 Commission regulations to the specific transaction or activity set forth in your request. *See*
6 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or
7 assumptions presented, and such facts or assumptions are material to a conclusion presented in
8 this advisory opinion, then the requestor may not rely on that conclusion as support for its
9 proposed activity. Any person involved in any specific transaction or activity which is
10 indistinguishable in all its material aspects from the transaction or activity with respect to which
11 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
12 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
13 affected by subsequent developments in the law including, but not limited to, statutes,
14 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
15 on the Commission's website.

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17 On behalf of the Commission,
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20

21 Caroline C. Hunter
22 Chair