

ADVISORY OPINION 1975-98

Payment for Flights to District and Program Advertisements by Wylie for Congress Committee

This advisory opinion is rendered under 2 U.S.C. §437f in response to a request for an opinion submitted by Congressman Chalmers P. Wylie, and published in the November 12, 1975, Federal Register (40 FR 52796), and interested parties were given an opportunity to submit written comments pertaining to the request. No comments were received.

The requesting party seeks an advisory opinion indicating whether airplane trips for the Congressman and advertisements in a football or high school play program and a newspaper may be paid for from the Wylie for Congress Committee account.

The Commission's opinion is that these payments may be legally made from the Committee account. They must be reported under 2 U.S.C. §434(b) as disbursements, but they would be "expenditures" under §431 only if "made for the purpose of influencing" the Congressman's nomination or election. Similarly, whether the payments are expenditures within the meaning of 18 U.S.C. §591(f) and thus chargeable against the Congressman's expenditure limitation under 18 U.S.C. §608(c), would depend upon the purpose of the expenditures. If they were made for the purpose of influencing the Congressman's nomination or election they would clearly count toward his applicable expenditure limitation. Expenditures made for purely personal or business purposes, however, would not count toward the limitation.

In general, the Commission would regard the payment of air fare from campaign funds for any trip between Columbus (his Congressional district) and Washington as an "expenditure" if the Congressman is a candidate with respect to the 1976 election and while present in the district he makes any campaign-oriented public appearances or otherwise engages in campaign-related activity that in itself involves the making of other expenditures or the acceptance of contributions for his campaign. Furthermore, the trip would be regarded as campaign-related if the Congressman-candidate deliberately conducts meetings or discussions with campaign or political advisers. The occurrence of incidental personal contacts or brief conversations in a setting that is predominantly social or professional rather than political, will not require that the travel be characterized as campaign-related.¹

Payment from the Committee account for an advertisement of the type described would generally be regarded as an "expenditure" if the ad (1) appears at a time when the Congressman is a candidate with respect to an election, including a primary in 1976 and (2) clearly identifies him by name, photograph, drawing, or unambiguous reference.

¹ The Commission recently adopted and sent to the Congress proposed allocation regulations which provide that a Senate or House candidate may use personal funds for travel between his or her district and Washington, D.C. without any obligation to report such expenses.

The Commission further notes that, under 2 U.S.C. §431(b)(2) and 18 U.S.C. §591(b)(2), a candidate is defined as one who has " . . . received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures. . ." Thus, if the Congressman were not already a candidate, the Commission would regard the above expenditures if made "for the purpose of influencing" his nomination or election as sufficient to bring him within this definition.

This advisory opinion is issued on an interim basis only pending promulgation by the Commission of rules and regulations or policy statements of general applicability.²

² See for example, the Commission's proposed regulation on office accounts now pending before the Congress.