FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 6, 1977

Re: AOR 1976-107

Mr. John W. Kerr, Jr.
Treasurer
Whitehurst for Congress Committee
c/o Goodman and Company
500 Plume Street East
Norfolk, Virginia 23514

Dear Mr. Kerr:

This is in response to your letter of December 2, 1976, requesting an advisory opinion regarding the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the usage of excess campaign funds by Congressman G. William Whitehurst. Your letter states that the Congressman is considering utilizing "excess campaign funds to finance a series of television programs over the next two years, which similar to a newsletter account will inform the Congressman's constituency of factual happenings in Washington that may affect them both directly and indirectly." You further state that the excess funds will be used to pay for both program production and actual air time.

You first inquire as to whether the use of excess campaign funds to finance such television programs is a lawful transfer pursuant to §113.2(a) of the Commission's proposed regulations. It is provided in §113.2(a) that excess campaign funds "[m]ay be used to defray any ordinary and necessary expenses incurred in connection with the recipient's duties as a holder of Federal office." In this case the Congressman apparently proposes to use the excess funds solely as a means of communicating to his constituents with regard to matters of national and local concern, and not for the purpose of influencing the election of any person to Federal office.[1] As such, the communications are generally made in connection with the Congressman's duties as a holder of Federal

[1] The payment of the costs of such programs does not constitute an expenditure so long as the programs relate to legislative business and not to an upcoming campaign. See AO 1975-107, 40 FR 60165 (December 31, 1975), a copy of which I enclose.

office, and the use of excess campaign funds for this purpose satisfies the requirements of §113.2(a).[2] However, §113.5(a) of the Commission's proposed regulations states:

> Any contributions to, or expenditures from, an office account which are made for the purpose of influencing a Federal election shall be subject to 2 U.S.C. §441a and Part 110 of these regulations.

The second part of your letter inquires as to whether the use of excess campaign funds to finance the television programs will cause the funds to be treated as taxable income to the Congressman or to any other person or entity. The Commission has no authority to comment on the income tax consequences of such a transfer; an inquiry of that nature should be directed to the Internal Revenue Service.

This response relates to your opinion request but may be regarded as informational only and not as an advisory opinion since it is based in part on proposed regulations of the Commission. These proposed regulations were formally adopted by the Commission and serve as interpretative rules of the Commission as to the meaning of the pertinent statutory language. The proposed rules were transmitted to the Congress on August 3, 1976. See 2 U.S.C. §438(c). For your information I enclose a copy of a Commission policy statement regarding those rules.

Sincerely yours,

(signed)
Vernon W. Thomson
Chairman for the
Federal Election Commission

Enclosures [8/25/76 FR reprint, AO 1975-107, and 10/5/76 policy statement]

[2] Receipts and disbursements of an office account are subject to disclosure as provided in §113.4 of the Commission's proposed regulations (copy enclosed).