



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 1, 1977

Re: AOR 1976-114

Honorable Joseph D. Early
House of Representatives
Washington, D.C. 20515

Dear Mr. Early:

This is in response to your letter of December 15, 1976, requesting an opinion regarding the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use of excess campaign funds. Specifically, you inquired concerning "the legality of using excess campaign funds to pay for the telephone bills in excess of my communication allowance for my Washington, D.C. office."

It is provided in 2 U.S.C. §439a that:

[a]mounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures . . . may be used by such candidate or individual, as the case may be, to defray any ordinary and necessary expenses incurred by him in connection with his duties as a holder of Federal office

Accordingly, it is permissible under the Act for you to use excess campaign funds to defray telephone costs incurred in the ordinary course of your official duties.

It should be noted that disbursements made for this purpose from your campaign committee are subject to the reporting requirements set forth in 2 U.S.C. §434 and Part 104 of the Commission's proposed regulations (copy enclosed). If the described disbursements are made from an office account to which the excess campaign funds were first transferred, they would be subject to the reporting requirements set forth in §113.4 of the Commission's proposed regulations.

The Commission expresses no opinion as to the Federal tax ramifications of the described transaction since those issues are within the jurisdiction of the Internal Revenue Service. See, for example, 26 U.S.C. §527.

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 originally transmitted to the Congress on August 3, 1976, and resubmitted on January 11, 1977. 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 and 10/5/76 policy statement]