



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 8, 1976

Re: AOR 1976-61

Honorable John G. Fary  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Fary:

This is in response to your letter of August 3, 1976, in which you ask whether you may use excess campaign funds to cover the cost of attorney's fees in a pending civil action brought against you and several members of your staff.

Section 439a, Title 2, U.S.C., states in part:

Amounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures, and any other amounts contributed to an individual for the purpose of supporting his activities as a holder of Federal office, 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, . . . or may be used for any other lawful purpose.

Section 113.1(e) of the Commission's proposed regulations to implement §439a defines the term "excess campaign funds," and §113.2 describes the purpose for which excess campaign funds may be expended. A copy of the cited provisions is enclosed. Assuming there is no relevant State law which prohibits that particular use, the payment of attorneys fees constitutes a use of funds for a "lawful purpose" under 2 U.S.C. §439a and the proposed regulations. See the Commission's response to AOR 1976-10, copy enclosed.

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 the proposed

regulations of the Commission which were submitted to Congress on August 3, 1976. The proposed regulations may be prescribed in final form by the Commission only if not disapproved either by the House or the Senate within thirty legislative days from the date they received them. See 2 U.S.C. §438(c). It is the Commission's view that no enforcement or compliance action should be initiated in this matter if your actions conform to the conclusion and views stated in this letter.

Sincerely yours,

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

Enclosure