



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 1, 1977

AO 1977-11

Honorable L. A. "Skip" Bafalis
House of Representatives
Washington, D. C. 20515

Dear Mr. Bafalis:

This refers to your letter of March 11, 1977, requesting an advisory opinion on several questions concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act").

Your first and second questions are (1) whether a Member of Congress must officially declare as a candidate for reelection in order to keep a previous campaign account "open and active for the receipt and disbursement of funds" and (2) whether the "maintaining of a campaign account in an active status--receiving contributions and disbursing funds-- [would] constitute a 'declaration of candidacy'?" A Member of Congress who maintains a "campaign account" and accepts contributions into such account or makes expenditures from it, or a Member on whose behalf an existing authorized political committee accepts contributions or makes expenditures, is deemed to be a candidate for Federal office in a future election.¹ Candidate status would arise irrespective of whether the Member "officially" declared as a candidate for reelection.

This conclusion is evident from 2 U.S.C. 431(b) which defines "candidate" to mean an individual who seeks nomination for election or election to Federal office and further provides that an individual is deemed to seek nomination or election if the individual has "received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;"

Upon attaining candidate status, an individual is required to designate a principal campaign committee, a campaign depository, and begin filing reports of receipts and expenditures at intervals specified in the Act. If a Member who becomes a candidate with respect to 1978 wishes to utilize a principal campaign committee which functioned as such with respect to the 1976 campaign, the Member should submit, within thirty days of becoming a candidate, an

¹ If the contributions accepted and expenditures made relate exclusively to the retiring of campaign debts from a previous election, then candidate status with respect to a future election would not arise solely by virtue of fundraising to retire the past campaign debt.

FEC Form 2--Statement of a Candidate for Nomination or Election to Federal Office. See 101.2 of the proposed regulations. A principal campaign committee which functioned as such during the 1976 campaign may be redesignated as a principal campaign committee for the 1978 election(s). The Commission notes that under 2 U.S.C. 434(a)(1)(C) quarterly reports in 1977 are not required for any quarter in which contributions received or expenditures made, or both, do not exceed a combined total of \$5,000 for the quarter.² For further general guidance see Parts 101, 102, 103, and 104 of the Commission's proposed regulations.

In posing your third question you explain that a Member of Congress in conducting "official business" is called upon to perform many services and acts which are "quasi-political in nature and which require the expenditure of sums of money." You then ask whether several specified expenditures may be authorized from a campaign account:

- a) Cost of travel within the District (or State) to address a Republican meeting or rally if the Member is Republican?
- b) Cost of flowers sent to constituents for funerals, anniversaries, etc.?
- c) Cost of (telegrams, special delivery letters, etc) sent to Republican organizations and not an authorized charge against House allowance for Official Expenses?
- d) Cost of flags purchased by Members and donated to civic, veterans, and charitable organizations?
- e) Cost of wife's travel within the District when she is specifically invited to attend functions (meetings, speeches, receptions, etc.) with her Member husband?
- f) Cost of printing and mailing of newsletters which, because of content, do not qualify for distribution under the frank?
- g) Cost of meals and other entertainment expenses for constituents either in Washington or in the District?

The Commission concludes that an expenditure may be authorized from a principal campaign committee or a campaign account maintained by an individual candidate for all of the expenses set forth above. The Commission has consistently stated that the Act is not restrictive with respect to the discretion a candidate, or his or her agents, may exercise in making expenditures for the purpose of influencing the candidate's nomination or election.³ Thus, payments for the costs described may be made from your campaign account or the campaign

² A postcard notice (FEC Form 3a) or letter with the same information must be submitted at the close of the first calendar quarter in 1977 in which the Member is a candidate but the \$5,000 threshold is not reached. See 104.1(c) of the proposed regulations.

³ See Advisory Opinions 1977-1 and 1976-116, and Commission responses to Advisory Opinion Requests 1976-114 and 1976-107, copies enclosed.

account of your authorized committee if they are regarded as expenditures for purposes of the Act and reported pursuant to 2 U.S.C. 434. See also 104.2 of the proposed regulations.

The Commission notes the possible application of the Rules of the House of Representatives to the types of expenditures you describe but may express no opinion with respect to those rules. Furthermore, the Commission expresses no opinion as to any Federal tax ramifications connected with the described expenditures since those issues are within the jurisdiction of the Internal Revenue Service.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

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

Enclosures