



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 26, 1977

AO 1977-39

Honorable William L. Clay
House of Representatives
Washington, D. C. 20515

Dear Mr. Clay:

This is in response to your letter of August 5, 1977, requesting an advisory opinion pursuant to the Federal Election Campaign Act of 1971, as amended ("the Act"), regarding the payment of "legal fees incurred pursuant to the defense of criminal prosecution relative to official, conduct in office" from funds in your campaign committee's account. You state that you were the subject of certain grand jury investigations, and you wish to pay the costs of your legal defense from your campaign fund.

Section 439a of Title 21 United States Code, provides that amounts received by a Federal candidate as campaign contributions which are in excess of any amount necessary to defray expenditures may be used to pay "ordinary and necessary expenses incurred in connection with" his or her duties as a Federal officeholder, may be contributed for certain charitable purposes, or "may be used for any other lawful purpose." Section 113.2 of the Commission's regulations further explains the uses which may be made of excess campaign funds.

The Commission has previously concluded that excess campaign funds may be expended to cover the costs of attorney's fees in a civil action brought against a member of Congress and several of his staff members, assuming no other law to the contrary. See the Commission's response to AOR 1976-61, copy enclosed. Assuming no other provision in Federal or State law is violated by the payment of your legal fees, neither the Act nor the Commission's prescribed regulations would prohibit the payment. Any payment for the legal fees should, of course, be reported as a disbursement by the committee making the payment. See 104.2 of the Commission's regulations.

The Commission expresses no opinion regarding the applicability of the Rules of the House of Representatives to this transaction, nor regarding any Federal income tax ramifications, since those issues are not within its jurisdiction.

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

Sincerely yours,

(signed)
Thomas E. Harris
Chairman for the
Federal Election Commission

Enclosure