



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**DISSENTING OPINION IN ADVISORY OPINION 1981-25**

of

**COMMISSIONER FRANK P. REICHE**

Congressman William E. Dannemeyer requested an advisory opinion concerning his proposed use of surplus funds remaining from the 1980 election. The specific use proposed by Congressman Dannemeyer was to pay transportation costs for his wife who apparently accompanies the Congressman at least once a month on return trips to his Congressional District in California. In Congressman Dannemeyer's words, "For almost every trip that I make to my home district, invariably there are one or more events at which it is anticipated that my wife will attend as a part of continuing the representative relationship of the district in the House of Representatives." Congressman Dannemeyer also notes that these surplus funds "...are being held for the purpose of the campaign in 1982".

The conclusion reached by the Federal Election Commission is that this use of surplus campaign funds by Congressman Dannemeyer would be lawful under the Federal Election Campaign Act. While I concur in the result, I do not concur with the reasons which underly this decision. Specifically, the opinion cites a number of uses for excess campaign funds, any one of which would support this holding. The legal uses cited in the opinion include the following:

1. To defray any ordinary and necessary expenses incurred in connection with [an individual's] duties as a holder of Federal office.
2. To contribute to a charitable or otherwise exempt organization described in Section 170(c) of the Internal Revenue Code.
3. Any other lawful purpose, including transfers without limitation to any national, state or local committee of any political party.
4. In the case of Members of Congress on January 8, 1980—any personal use.

The advisory opinion also labels as lawful the use of such funds for campaign-related purposes. My difficulty with the advisory opinion is that it does not state the basis

for its conclusion in Congressman Dannemeyer's situation. We do not know whether the Commission based its determination on the alleged office-related nature of the proposed expense, the possible campaign-related nature of such expense, a finding that this use was lawful under the Act, or the grandfather clause which protects those who are Members of Congress, as of January 8, 1980 and sanctions their personal use of such surplus campaign funds.

If, for example, the basis for this decision is the grandfather clause, then I believe the Commission should so state. The Commission has a duty to declare with specificity the reasons for advisory opinion determinations and not merely to enumerate a variety of reasons without indicating which might fit the circumstances in question. I believe the Commission has a responsibility in issuing advisory opinions to provide guidance for others in similar circumstances. This is a responsibility which the Commission has not shouldered in this case and it is for this reason that I concur in the result, while questioning the reasoning therefor.