



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 20, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-8

The Honorable John J. Duncan
United States House of Representatives
2458 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Duncan:

This responds to your letter of February 22, 1984, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed use of campaign funds.

According to your letter, you propose that your authorized campaign committee pay you for your campaign travelling expenses on a "reasonable per diem" basis "in lieu of record keeping of actual mileage and other items such as lodging, food." You state that you would be paid "while travelling strictly for political purposes." You ask whether this arrangement would be permissible under the Act and Commission regulations. The Commission concludes that while your committee would be permitted to pay you for your campaign travel expenses, you and your committee nonetheless would be required to keep certain specific records relating to such expenses.

The Commission has held in a number of advisory opinions that under the Act and Commission regulations candidates and their authorized campaign committees have considerable discretion in making expenditures from campaign funds. See Advisory Opinions 1983-1, 1980-49, 1980-29, 1978-80, 1978-5 and 1977-12, copies enclosed. Accordingly, the payment of a per diem by your authorized campaign committee to you for campaign travel purposes is permissible under the Act. Your authorized committee must, of course, report and itemize the per diem payments to you as "travel and subsistence expenses" if, in the aggregate, they exceed \$200 for the calendar year. See 2 U.S.C. 434(b) and 11 CFR 104.3(b)(4).

Under the Act, you are considered an agent of your principal campaign committee when you make any expenditures in connection with your campaign. 2 U.S.C. 432(e)(2). Thus, whenever you pay campaign travel expenses, you should provide your committee with the

documentation that is required by the Act and Commission regulations.* The relevant requirements are discussed below.

If you receive the per diem payments before you actually incur campaign travel expenses, such payments would be treated as advances for your travel and subsistence. The regulations specify that for an advance of \$500 or less, an expense voucher or other expense account documentation, and a cancelled check issued to the recipient of the advance, shall be obtained and kept as a committee record. For travel and subsistence advances greater than \$500, you would have to obtain and give to your committee a receipt (or invoice) from the person who provides goods or services in consideration for a payment from you in excess of \$200 per transaction; alternatively, your cancelled check issued to such a person must be given to your committee. 11 CFR 102.9(b)-(2). If your campaign travel expenses are charged on your personal credit card in any amount, you may satisfy the documentation requirements by giving your committee the monthly billing statement or customer receipt, as well as your cancelled check showing payment of such bill.

11 CFR 102.9(b)(2)(ii).

If you receive the per diem payments as reimbursements after you have incurred and paid campaign travel expenses from your own personal funds, the regulations also require that certain records be kept. If your payment to any person for travel and subsistence purposes exceeds \$200 per transaction, you need to obtain a receipt (or invoice) from that person and must give it to your committee. Alternatively, you may give your committee your cancelled check for that payment or your credit card documentation (as described above). 11 CFR 102.9(b)(2). Your committee's reporting obligations with respect to itemizing reimbursements paid to you are similar to those mentioned above except that the purpose of such payments should be listed as "travel and subsistence expense reimbursement." 11 CFR 104.3(b)(4)(i).

The Commission expresses no opinion as to the possible application of House rules to the described activity, nor as to any tax ramifications, since those issues are outside its jurisdiction.

* This discussion and the issues raised are limited to the situation where the candidate is using his own personal funds to pay his own campaign travel expenses and where his campaign will not receive Federal funds.

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This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Lee Ann Elliott
Chairman for the
Federal Election Commission

Enclosures (AOs 1983-1, 1980-49, 1980-29, 1978-80, 1978-5 and 1977-12)

P.S. Commissioner McDonald voted against approval of this opinion and will file a dissenting opinion at a later date.