



FEDERAL ELECTION COMMISSION  
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CERTIFIED MAIL  
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ADVISORY OPINION 1984-48

Jack Cozort, Esq.  
David F. Kirby, Esq.  
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1020 Washington Street  
Raleigh, N.C. 27605

Dear Mr. Cozort and Mr. Kirby:

This responds to your letters of September 13 and 14, 1984, requesting an advisory opinion on behalf of Governor Jim Hunt and the Jim Hunt Committee, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the reporting and allocation of campaign-related and noncampaign-related travel expenses on government conveyances.

Governor Jim Hunt is a candidate for the U.S. Senate from North Carolina in the November 6, 1984, general election. The Jim Hunt Committee is his principal campaign committee and is registered with the Commission. You state, that Governor Hunt has used state aircraft for travel, whether for campaign purposes or for official purposes, because of security reasons. You propose the following set of guidelines by which the Jim Hunt Committee will pay the State of North Carolina for campaign-related use of state aircraft:

PROPOSED GUIDELINES FOR ALLOCATION OF TRAVEL EXPENSES.

Federal election law requires that a candidate report all travel expenses incurred in connection with planned campaign-related activity.

When the Governor uses government conveyances or accommodations in the air or on the ground, the Governor's campaign committee must reimburse the State for all travel expenses connected with campaign-related activity for both the Governor and any other persons who are participating in campaign-related activities. The reimbursement must be in accordance with federal law, as outlined below.

I. Campaign-Related Travel.

The Committee must reimburse the State for use of State conveyances for the following people under the following circumstances:

- A. The Governor, when he has any scheduled campaign-related activities. Incidental contact with political supporters at official functions is not deemed campaign-related.
- B. Members of the Governor's family, when they are conducting campaign-related activities, such as a fundraiser, or giving a campaign speech.
- C. Campaign personnel, both paid and voluntary, anytime they travel on a State conveyance, whether or not the trip is official or political.
- D. Anyone else traveling on a State conveyance who is conducting any campaign-related activities.

## II. Computation of Costs.

The Committee must reimburse the State for travel described above, both air and ground. The costs are to be computed in the following manner:

A. Ground Travel: All ground travel under the circumstances described above is reportable and reimbursable when an automobile is used in conjunction with air travel. Costs are to be computed in one of the following methods:

- (1) At 20 1/2 cents per mile, if accurate records of actual mileage are kept, up to 150 miles. At this point, use \$32.00 per day rate. (Minimum of \$10.00)
- (2) At \$6.00 per hour if accurate records of time are kept, in accordance with the attached schedule, with a minimum of \$10.00. If ground conveyance is used for more than five (5) hours, use daily rate of \$32.00 per day.
- (3) At \$32.00 per day, in accordance with the attached schedule, if there are neither accurate mileage records nor accurate time records.

B. Air Travel.

(1) Imaginary Trip: When there has been a determination that travel on a State-owned aircraft is a reportable and reimbursable expense under the guidelines of Section I, the next step is to reconstruct an imaginary trip which covers all of the campaign-related activity. Use the following guidelines for determining the exact route of the imaginary trip.

(a) For the Governor and members of his family, construct an imaginary trip, from the point of origin, through each city where campaign-related activity was conducted, and back to the point of origin.

(b) List the exact aircraft used by the State. Make sure each type is listed if different aircraft are used on different segments of the trip.

(c) Determine how many people on what type of aircraft are to be reimbursable for each segment of each trip.

**REMEMBER:** Any scheduled campaign-related activity at a city makes that stop of the trip reimbursable, even if most of the activity was official.

(2) Computation of Costs: The basic rule is that the Committee must reimburse the State an amount equal to what it would cost to use "comparable commercial conveyance". The rules are based on fairness. The Governor, as a candidate, must not be given an advantage by being able to use the State-owned conveyance. There are two possible means of travel by plane: regularly scheduled air service and charter flights. To determine which to use, and how to compute the costs, use the following guidelines:

(a) If all stops on the imaginary trip are at locations served by regularly scheduled commercial air service, the rate to be used is first class air fare for each person whose travel is reportable and reimbursable. (See 11 CFR 9034.7(b)(5)(i).)

(b) If one or more of the stops are at locations not served by regularly scheduled commercial air service, charter rates are to be used. The State should be reimbursed for the cost of facilities sufficient to accommodate the Governor and others conducting campaign-related activities, less the cost of authorized or required personnel. The Governor's use of the State aircraft for all travel is at the request of State Bureau of Investigation Director Haywood Starling, who is ultimately responsible for the Governor's security. Therefore, the committee will exclude the cost of transporting security in calculating the amount to be reimbursed. (See 11 CFR 9034.7(b)(5)(ii).)

(c) If a helicopter is used, always figure reimbursements using rates for helicopters, even when travel is to cities served by regularly-scheduled commercial service. Do not use first class rates when one of the helicopters is used. Never use rates for fixed-wing charters when a helicopter is used; use helicopter charter rates. When the Bell 222 is used, use those rates. Do not use rates for smaller, more spartan conveyances.

(d) In determining how much the Committee should reimburse the State, use one of these methods:

(1) Use the charter rate for a similar aircraft, less a proportionate cost for security and persons on official business, when appropriate. For example, if the total cost of chartering similar aircraft including the pilot was \$600.00, and the only passengers on board were the Governor, and one security agent, and the trip was part official and part political, the Committee should reimburse the State \$300.00, one-half of the total chartered cost.

(2) Use the charter rate for similar aircraft sufficiently large to carry the Governor and other persons deemed reimbursable. In other words, it is permissible to use the charter rate for a smaller similar aircraft, if a smaller aircraft would have carried the Governor, and others deemed reimbursable.

(3) When computing the charter rates, use the times recorded by the pilots on the Department of Commerce invoice for actual flight time and actual ground time. Do not use the estimated flying times and ground times from the schedule. Always include in flight time the time for the helicopter to fly from the hanger to, pick up the Governor downtown and to return to the hanger after leaving the Governor downtown.

(4) If the reimbursement cost for air travel is ever less than the cost of the trip to the Department of Commerce, regardless of the method used to compute the reimbursement cost, use the cost of the trip to the Department of Commerce as the amount to be reimbursed.

You ask whether the Jim Hunt Committee's use of these guidelines will comply with the Act. You also pose seven specific questions, as follows:

1. When the term "comparable commercial conveyance" is used in 11 CFR 106.3, is the Committee allowed to reimburse travel expenses at the rate of the first class air fare when travel is to a city served by regularly scheduled commercial air service?
2. In the case of travel to a city not served by regularly scheduled commercial air service, is the Committee required to reimburse at the usual charter rate for a "comparable commercial conveyance"?
3. Does the Committee have the option of paying the usual charter rate for commercial conveyance instead of the first class air fare when travel is to a city served by regularly scheduled commercial air service?

4. In determining the rate for a "comparable commercial conveyance", is it permissible for the Committee to calculate the reportable expense by dividing the total operating cost for the usual charter rate for a Comparable airplane or helicopter by the total number of passengers transported and pay the State an amount equal to that portion of the actual cost of the charter which is allocable to all passengers traveling for campaign purposes? In calculating this amount, if the candidate is required or authorized by law to be accompanied by security or authorized staff, is it permissible for the Committee to exclude those costs in allocating reportable and reimbursable expenditures?

5. Is it permissible for the Committee to calculate the reportable and reimbursable travel expense by determining the usual charter rate for a smaller airplane or helicopter which is sufficiently large to transport the Governor and all other persons who are conducting campaign-related activity, less facilities sufficient to accommodate staff or security which is authorized or required by law to accompany the Governor. For example, if the Governor, security, and one Campaign aide travel between cities in North Carolina along with the pilot and security personnel, is it permissible for the Governor to pay for the usual charter rate of a smaller aircraft which is sufficiently large to transport the Governor, security, and the aide?

6. When calculating the amount to be reported and reimbursed, does the Committee have the option of selecting between a cost calculation based on the actual conveyance used or the usual charter rate for a similar aircraft sufficiently large to transport all persons conducting campaign activity?

7. The State Bureau of Investigation which provides security for the Governor has recommended that the Governor travel on state-owned aircraft, piloted by state employees, for security and safety reasons. Please confirm that the cost of required security personnel is excludable in calculating the cost of "comparable commercial conveyance" under 11 CFR 106.3(e)?

The Act requires the reporting and itemizing of disbursements by a candidate's principal campaign committee. See 2 U.S.C. 434(b). Commission regulations require the reporting of "[all] expenditures for campaign-related travel paid for by a candidate from a campaign account or by his or her authorized committees or by any other political committee... ." 11 CFR 106.3(a). When a candidate uses a government conveyance for campaign-related travel, Commission regulations provide:

(e) Notwithstanding paragraphs (b) and (c) of this section, the reportable expenditure for a candidate who uses government conveyance or accommodations for travel which is campaign-related is the rate for comparable commercial conveyance or accommodation. In the case of a candidate authorized by law or required by national security to be accompanied by staff and equipment, the allocable expenditures are the costs of facilities sufficient to accommodate the party, less authorized or required personnel and equipment. If such a trip includes

both campaign and noncampaign stops, equivalent costs are calculated in accordance with paragraphs (b) and (c) of this section.

11 CFR 106.3(e). The referenced subsections (b) and (c) provide:

(b) (1) Travel expenses paid for by a candidate from personal funds, or from a source other than a political committee, shall constitute reportable expenditures if the travel is campaign-related.

(2) Where a candidate's trip involves both campaign-related and non-campaign-related stops, the expenditures allocable for campaign purposes are reportable, and are calculated on the actual cost-per-mile of the means of transportation actually used, starting at the point of origin of the trip, via every campaign-related stop and ending at the point of origin.

(3) Where a candidate conducts any campaign-related activity in a stop, the stop is a campaign-related stop and travel expenditures made are reportable. Campaign-related activity shall not include any incidental contacts.

(c) (1) Where an individual, other than a candidate, conducts campaign-related activities on a trip, the portion of the trip attributed to each candidate shall be allocated on a reasonable basis.

(2) Travel expenses of a candidate's spouse and family are reportable as expenditures only if the spouse or family members conduct campaign-related activities.

11 CFR 106.3(b) and (c). The Committee must also retain the records on which such travel expense determinations and allocations are based. See 11 CFR 104.14. The Committee should also keep a list of all passengers on each trip, along with a designation of which passengers are and which are not campaign-related. With respect to 11 CFR 106.3(e), the Commission interprets the term "comparable commercial conveyance" to mean a commercial conveyance comparable to the government conveyance actually used in terms of type (e.g., jet aircraft versus prop plane) and services offered (e.g., plane with dining service or lavatory versus one without).

With regard to the seven specific questions you pose, the Commission responds affirmatively to questions 1 and 2, but it responds negatively to questions 3 and 6. The Commission's responses to questions 4, 5, and 7 require some explanation as to its understanding of the questions themselves and some discussion of its answers.

Questions four and five are closely related and for that reason will be restated, and answered together. The Commission understands question four as asking whether the method for determining the reportable travel expenses for using a government aircraft (to make a campaign trip to locations where regularly scheduled commercial service is not available) may use a pro rata calculation based on the commercial charter rate that would be paid for a comparable aircraft making the same trip as the government aircraft. This pro rata calculation, as you explain it,

would start with the total charter cost for a comparable aircraft making the same trip, that cost would be divided by the total number of passengers (not including pilot and other flight crew personnel) whether or not any passenger was on the trip for campaign purposes or as required security personnel assigned to Governor Hunt. The quotient would represent the per passenger cost allocation. That amount would then be multiplied by the number of passengers traveling for campaign purposes to determine the payment for campaign travel expenses that would be made by the Hunt Committee to the State of North Carolina and reported as an expenditure under the Act and Commission regulations. This proposed method, as the Commission understands it, would mean that the travel cost allocable to passengers who are security personnel, or authorized staff to assist the Governor in his official duties, would not be treated as campaign expenditures.

The Commission concludes that the above described procedure, as stated in your question four and reflected in your proposed guidelines, would not comply with the cited regulation, 11 CFR 106.3(e). This regulation, quoted above, contemplates determining the number of passengers in the group who will perform campaign functions and then calculating the cost of chartering an aircraft, comparable to the government aircraft actually used, to make the campaign trip. This approach requires using the charter rate for an aircraft fairly comparable to the aircraft that will actually make the trip. For example, if the government aircraft to be used is twin engine prop jet, a single engine, prop aircraft would not be comparable for purposes of the regulation. At the same time if the Hunt Committee would have to pay higher costs to charter a comparable aircraft to carry all passengers (campaign and noncampaign) than it would have to pay for chartering a comparable aircraft just to carry the campaign personnel, the regulation permits the expenditure to be established at the lower amounts. By the same token, if the charter cost for a comparable aircraft is the same for a travel party of four (including one security person) as the cost for three (or fewer) campaign personnel traveling by themselves, the regulation requires that the charter cost for the four people using a comparable aircraft be treated as the required campaign expenditure.

The foregoing response also answers question five. The charter rate for an aircraft smaller than an aircraft that would be necessary to accommodate the entire traveling party, but sufficient in size to accommodate the campaign-related travelers and comparable in terms of type and service offered, may be used.

In response to question seven, the Commission's foregoing explanation also provides the answer. If air travel is to a location served by regularly-scheduled commercial air service, the campaign need only reimburse the State for the first class airfare of those persons whose travel is campaign-related, and need not reimburse the State for persons whose only function is to provide security. If travel is to a location not served by regularly-scheduled commercial air service, the campaign committee need only reimburse the State for the charter cost of a comparable commercial conveyance sufficient to accommodate the campaign-related travelers, as explained above.

As is apparent from the foregoing discussion, the Commission is of the opinion that the basis for calculating campaign travel costs for candidates who do not receive Federal funding for their campaigns is different from the basis used by candidates who receive such funding. Compare 11 CFR 106.3(e) with 11 CFR 9004.7(b)(7)(i) and 9034.7(b)(7)(i). Accordingly, in

view of the responses given to your questions four and five, modifications should be made to your proposed guidelines with respect to the proper calculation method and application of the term "comparable commercial conveyance." Furthermore, the Commission suggests that you clarify that the automobile rental rates must accurately reflect the usual and normal rental charges available in the market at the time an automobile is used. See 11 CFR 100.7(a)(1)(iii)(B); and also Advisory Opinions 1978-45 and 1978-34.

Because this response related only to proposed future activity, the Commission expresses no opinion concerning prior reporting and the adequacy of payments previously made for campaign-related travel in government conveyances by the Jim Hunt Committee. In addition, to the extent that Governor Hunt discontinues use of State aircraft until after the November general election, this request becomes hypothetical. 11 CFR 112.1(b). Accordingly, the opinion is necessarily limited to the proper application of the proposed guidelines, and the questions relating thereto, to actual travel expenses incurred but not yet due and owing. Finally, the Commission expressly declines to indicate any views concerning the possible application of State law in this situation or the preemption, vel non, of State law under 2 U.S.C. 453.

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