FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 18, 1984

<u>CERTIFIED MAIL</u>
<u>RETURN RECEIPT REQUESTED</u>

ADVISORY OPINION 1984-49

Representative Geraldine A. Ferraro
312 Cannon House Office Building
Washington, D.C. 20515

Dear Representative Ferraro:

This responds to your letter of September 12, 1984, in which you request an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to a proposed reimbursement of travel expenses to a staff member by your Congressional campaign committee.

Your letter states that on June 30, 1984, your administrative assistant, Eleanor G. Lewis, accompanied you to the National Organization of Women's annual convention in Miami, Florida. You indicate that the trip was not for "official business." Later you received the Democratic nomination for Vice President and abandoned your campaign for reelection to Congress. You ask whether it is permissible for the Geraldine A. Ferraro for Congress 1984 Committee to reimburse Mrs. Lewis for her travel expenses.

The Commission assumes that you intend to use excess campaign funds held by your Congressional campaign committee to make the proposed reimbursement. Commission regulations define excess campaign funds as amounts received by a candidate as contributions which the candidate determines exceed the amount needed to pay campaign expenses. 11 CFR 113.1(e). As you are no longer running for Congress, you may designate those funds which are not needed to pay Congressional campaign expenses as excess campaign funds.

The Act, as amended in 1979, provides that excess campaign funds may be used to pay "ordinary and necessary expenses incurred in connection with" an individual's "duties as a holder of Federal office." 2 U.S.C. 439a. As a general rule such funds may not be converted for personal use but that rule does not apply to any individual who was a Member of Congress on January 8, 1980. 2 U.S.C. 439a; 11 CFR 113.2(d).

Your request states that this trip was not "one of official business," but does not specifically indicate whether the purpose of Mrs. Lewis' travel with you was otherwise in

connection with your duties as a holder of Federal office. Nor does your request indicate whether the trip was taken by Mrs. Lewis as a personal courtesy to assist you as a Member of Congress or in some other capacity.

Regardless of the purpose of your and Mrs. Lewis' travel to attend the described convention, since you were a member of Congress on January 8, 1980, and are therefore not prohibited by 439a from using excess campaign funds for personal purposes, the expenses for Mrs. Lewis' travel may be paid by your 1984 Congressional campaign committee. See Advisory Opinion 1981-25. You have not stated that the purpose of the travel related to the 1984 Presidential election; therefore, the Commission does not reach any issues that would arise if such a purpose was present. See 11 CFR 100.7(b)(8), 106.1(b), 9034.7.

The Act and Commission regulations further provide that payments by political committees greater than $200 in the same calendar year to any person must be reported as an itemized disbursement during the appropriate reporting period. 2 U.S.C. 434(b)(4)(G) and 434(b)(6)(A), 11 CFR 104.3(b)(4)(vi). If the payment to Mrs. Lewis is greater than $200, it should be reported as an itemized "other" disbursement to her with a brief description of its purpose, such as "travel expense reimbursement for noncampaign travel." 11 CFR 104.3(b)(4)(vi).

The Commission expresses no opinion regarding the possible application of House rules to the proposed activity, nor as to tax ramifications, since those issues are outside the Commission's jurisdiction.

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

Enclosure (AO 1981-25)