



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 20, 1987

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-1

Timothy J. Newlin
Attorney at Law
1200 Lehman Building
Peoria, Illinois 61602

Dear Mr. Newlin:

This responds to your letters of December 4, 1986, and January 12, 1987, requesting an advisory opinion on behalf of James Dawson concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed reimbursement for lost wages.

You state that Mr. Dawson was a Democratic candidate in the, 18th Congressional District of Illinois in 1986. According to your request, Mr. Dawson plans to make a claim against his principal campaign committee, Friends of Jim Dawson ("the Committee"), in the amount of \$7,000. This represents the amount he would have earned at his job with the Illinois Attorney General from August 15 to November 30, 1986, had he not been a candidate.

You state that the Committee proposes to use "unexpended funds" to pay Mr. Dawson for the lost wages. You note, however, that the Committee has a deficit of \$756.16. Accordingly, the Committee plans to hold a fundraiser to help retire the deficit and to pay any possible lost wage claim by Mr. Dawson. Your request states that there is no written agreement between Mr. Dawson and the Committee regarding the proposed reimbursement. You ask whether this arrangement is permissible.

The issue raised by your request is whether the Committee's payment of Mr. Dawson's claim for lost wages would be a prohibited conversion of campaign funds to his personal use. In the situation you present, any funds the Committee raises that are in excess of the amount needed to retire the existing debt (\$756.16) would be viewed as excess campaign funds. Under the Act,

excess campaign funds may be used for a variety of specified purposes that are expressly made lawful, and may also be used "for any other lawful purpose, except that, with respect to an individual who was not a Member of Congress on January 8, 1980, no such amounts may be converted to any personal use." 2 U.S.C. 439a and 11 CFR 113.2. The Commission concludes that the Committee's payment of Mr. Dawson's "Claim" for lost wages would constitute a conversion of campaign funds to personal use and therefore would be prohibited.

The Commission has recently concluded that 2 U.S.C. 439a prohibits the use of excess campaign funds by a candidate or former candidate to confer a direct or indirect financial benefit* on such individual except in those situations where the financial benefit is in consideration of valuable services performed for the campaign. Advisory Opinion 1986-39; also, see Advisory Opinion 1983-27.

In the situation you have presented, the payment for Mr. Dawson's lost wages would result in a financial benefit to him. Moreover, the Committee did not previously enter into any written agreement with him that provided for compensation in exchange for valuable services to the campaign. This situation is also distinguishable from that presented in Advisory Opinion 1982-64. There, the Commission permitted a principal campaign committee to assume and solicit contributions to repay the candidate's outstanding bank loan, the proceeds of which had been used primarily to pay the candidate's living expenses during the campaign. In contrast, your situation involves a direct financial benefit to Mr. Dawson without any preexisting contract, debt or obligation that could properly be assumed by the Committee. Accordingly, the claim for lost wages may not be viewed as a Committee obligation. For these reasons, the proposed reimbursement of Mr. Dawson's lost wages would constitute a prohibited personal use of excess campaign funds.

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)

Scott E. Thomas
Chairman for the Federal Election Commission

Enclosures: (AOs 1986-45, 1986-39, 1983-27, and 1982-64)

* / Commission regulations specifically permit loan repayments to candidate where loans were made to the campaign committee from the candidate's personal funds. 11 CFR 113.2(d). In some circumstances the loan repayments may include interest as well as repayment of loan principal. Advisory Opinion 1986-45.