



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 21, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-13

Honorable Richard Ray
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Ray:

This responds to your March 8, 1988 letter, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to payments by your campaign committee for an apartment lease.

Reports and statements filed with the Commission indicate that you are a candidate for reelection to the United States House of Representatives for the Third Congressional District in Georgia. Because Columbus is the most urban area within your District, you want "to maintain a permanent satellite campaign office there." You state that you own a residential duplex in Columbus, Georgia which you rent as two units, 5A and 5B. Unit 5B is "fully rented," and you currently rent and occupy unit 5A with another tenant. You propose to replace the other tenant in unit 5A with your campaign committee.

The committee would lease 288 square feet of floor space for files, computer operations, telephones, and work space. Campaign workers would utilize the kitchen, living room, and comfort areas, and when you travel to Columbus you would continue to stay in a portion of these quarters. You state that you would "pay 60 percent of the monthly rental cost, or \$650 per month, which is the same rent that [you] have always paid. The 40 percent that the campaign [would] pay [would] simply replace the amount paid by the previous tenant." Additionally, you state that the campaign would pay the telephone bills and "its pro rata share of the utilities."

You ask whether the described rental arrangement is permissible under the Act and regulations.

Under the Act and regulations, a candidate and the candidate's campaign committee have wide discretion in making expenditures to influence the candidate's election. 2 U.S.C. 431(9);

Advisory Opinions 1985-42, 1983-1 and 1978-80. However, under 2 U.S.C. 439a, amounts received by a candidate as contributions that are in excess of any amount necessary to defray the candidate's expenditures may not be converted by any person to any personal use. See Advisory Opinions 1985-42 and 1985-22.

In past opinions, the Commission has held that campaign committees may pay a portion of the candidate's rent where campaign staff use a candidate's apartment for sleeping accommodations, pay rent to a candidate for campaign office space in a candidate's house, and pay a portion of the rent on a candidate's residence where a part of the house is used for campaign equipment storage. See Advisory Opinions 1985-42, 1983-1 and 1978-80. If such rental payments by a candidate's campaign committee represent more than the usual and normal charge for the use of the facilities in question, the amount in excess of the usual and normal charge would be subject to the personal use ban of 2 U.S.C. 439a. If, on the other hand, such rental payments are less than the usual and normal charge, the difference would be a contribution in-kind by a candidate to his or her committee, and although not limited by the Act, it would be reportable by the candidate's committee. 11 CFR 100.7(a)(1)(iii), 104.13(a) and 110.10.

The Commission assumes that the rental payments for the committee's share of the space, telephone costs and utilities will represent the usual and normal charge prevailing for such goods or services in the commercial marketplace. Accordingly, the Commission concludes that you may lease to your campaign committee space in unit 5A, provided payments under the lease are properly reported pursuant to 2 U.S.C. 434(b) and 11 CFR 104.3(b).

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

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

Very truly yours,

(signed)

Thomas J. Josefiak
Chairman of the Federal Election Commission