



FEDERAL ELECTION COMMISSION

WASHINGTON DC 20463

CONCURRING OPINION
OF

VICE CHAIRMAN SCOTT E. THOMAS
COMMISSIONER DANNY LEE MCDONALD
COMMISSIONER JOHN WARREN MCGARRY

ADVISORY OPINION 1992-1
ADVISORY OPINION 1992-4

The Federal Election Campaign Act of 1971, as amended ("FECA" or the "the Act"), broadly prohibits the conversion of candidate campaign funds to personal use. 2 U.S.C. §439a. Advisory Opinions 1992-1 and 1992-4 present the question of whether this personal use ban prohibits certain proposed candidate committee disbursements. In our opinion, the plain language of the statute and prior Commission advisory opinions indicate that a campaign's ability to make disbursements is not unlimited, and that the Act's personal use ban prohibits those disbursements which personally benefit the candidate and are not campaign-related.

I.

As always, the analysis in every case involving the construction of a statute "must begin with the language of the statute itself." Bread Political Action Committee v. Federal Election Commission, 455 U.S. 577, 580 (1982). The personal use prohibition in §439a, enacted as part of the Federal Election Campaign Act Amendments of 1979, 93 Stat. 1339, could scarcely be more emphatic. In pertinent part, the provision states that no campaign contributions "may be converted by any person to any personal use." 2 U.S.C. §439a (emphasis added).

1. The entire text of 2 U.S.C. §439a (without changes to the 'grandfather' clause effected by Sec. 504 of the Ethics Reform Act of 1989) provides:

Amounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures, and any other amounts contributed to an individual for the purpose of supporting his or her activities as a holder of Federal office, may be used

On its face, the language of section 439a would prohibit the use of campaign contributions to pay for such personal items as the mortgage on a candidate's home, the bank loan on a candidate's car, and the electric and heating bills for a candidate's home. Absent some indication that these payments were made in connection with specific campaign activity, we believe that payments for such personal financial obligations -- especially those which existed well before an individual became a candidate and will continue well after an individual has terminated candidate status -- fall within the personal use prohibition of §439. Congress' choice of the expansive language "any personal use" (emphasis added) plainly requires this construction.

(Footnote 1 continued from previous page)

by such candidate or individual, as the case may be, to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office, may be contributed to any organization described in section 170(c) of title 26, or may be used for any other lawful purpose, including transfers without limitation to any national, State, or local committee of any political party; except that, with respect to any individual who is not a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress on January 8, 1980, no such amounts may be converted by any person to any personal use, other than to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office.

(emphasis added).

We reject the suggestion of some that the phrase "excess campaign funds" contained in §439a limits application of the personal use ban to the disposition of campaign funds "leftover" after an election. Not only is this weakening construction of §439a contrary to Commission precedent (see, e.g., Advisory Opinion 1988-13 and 1985-42, discussed infra) and regulations (see 11 C.F.R. §113.1(e) which defines "excess campaign funds" according to the candidate's action, not the time in the election process); section 439a would mean very little if, during the campaign, a candidate could spend committee funds to buy, for example, a luxury automobile as a birthday gift for the candidate's son or daughter with no campaign purpose in mind. Yet, under the narrow "excess campaign funds" construction, a candidate could buy such an automobile as long as the purchase was made during a campaign.

This reading of the statute is consistent with a long line of Commission advisory opinions construing the applicability of §439a. As a general proposition, these opinions recognize that "[u]nder the Act and regulations, a candidate and the candidate's campaign committee have wide discretion in making expenditures to influence the candidate's election." Advisory Opinion 1988-13, 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶5921; see also 2 U.S.C. §431(9); Advisory Opinions 1987-2, 1987-1, 1985-42, 1981-2 and 1980-138 reported respectively at 1 or 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶¶ 5883, 5882, 5841, 5591, and 5581. This broad discretion in making expenditures is not without limit, however, for these opinions explicitly recognize the continuing force and effect of the personal use prohibition of §439a. For example, a campaign committee may have wide latitude in making campaign expenditures for the rental of apartment space and automobiles, but only so long as the expenditures are for some bona-fide campaign function or activity and not for the personal benefit of any person.

Beginning with Advisory Opinion 1980-138, considered less than a year after the personal use ban in §439a was enacted, the Commission has distinguished those living expenses that are legitimate campaign expenditures from those that are not "for campaign purposes" or "incidental to election to federal office." In deciding what is a "campaign purpose," the Commission has not been satisfied by the simple assertion that a candidate has used an apartment or a car. Rather, the Commission has looked to whether there is some legitimate campaign activity attached to the candidate's use of the apartment (storage for campaign material or lodging of campaign staff) or the automobile (candidate transportation to and from campaign events). Absent a showing of some related campaign activity, the Commission has found that committee disbursements made for the candidate's personal living expenses are subject to the §439a prohibitions.

In Advisory Opinion 1980-138, the Commission concluded that a principal campaign committee could pay for the moving expenses of a newly-elected Senator, but not the personal living expenses of the Senator and his family. The Commission stated that:

With respect to the payment of living expenses of the Senator-elect and his family (during the period between November 5, 1980 and the date he is sworn in as a United States Senator), those expenses would exist whether [the Senator] was elected to Federal office or not, and accordingly are not 'incidental' to his election to Federal office. Payment from excess campaign funds for these living expenses would therefore be a 'personal use' of such funds prohibited by the Act since the Senator-elect was not a member of Congress on January 8, 1980.

(emphasis added). See also Advisory Opinion 1981-2, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5591 ("[E]xpenses which would exist regardless of an individual's election to federal office are not 'incidental' and may not be paid from campaign funds.").

In Advisory Opinion 1985-42, the Commission drew a distinction between those committee expenditures that would be "for campaign purposes" and those committee disbursements that would be for a prohibited "personal use." A candidate proposed to lease an apartment in Washington, D.C. for his "personal use." The candidate asked if campaign funds could be used to pay for a portion of the lease since the apartment would be frequently used by campaign staff. The Commission held that "[t]o the extent the use of the apartment by your campaign staff is to accommodate them on their visits to Washington for campaign purposes,...an allocable portion of the lease may be paid by your campaign committee and treated for purposes of the Act as an expenditure to influence your nomination or election." (emphasis added). The Commission warned, however, that if "the use of the apartment is provided to your campaign staff in connection with visits to Washington that are not for the purpose of conducting campaign activities, the payments made by your committee would appear to represent a use of excess campaign funds for a personal purpose. See 2 U.S.C. §439a." (emphasis added).

The Commission clearly indicated in Advisory Opinion 1985-42 that the use of an apartment or house by a candidate as a residence is insufficient by itself to convert the rent or mortgage payments for that residence into a campaign operating expenditure. Indeed, it was only when the campaign staff had used the apartment for "campaign purposes" that rental payments for use of the residence could be considered a campaign operating expenditure payable with campaign funds.

Similarly, in Advisory Opinion 1988-13, the Commission reviewed a request made by a candidate who sought to rent part of a duplex, which he both owned and used, to his campaign. Under the rental agreement, the campaign committee would pay 40% of the rent for use of the duplex for file storage, computer operations, telephone and work space, and the candidate would continue to pay 60% of the rent (In the past, the candidate had another tenant with whom he had shared rent). Citing with approval Advisory Opinion 1985-42, the Commission allowed the committee to pay its share of the apartment rent but warned again that "[i]f 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." (emphasis added).

In Advisory Opinion 1987-2, the Commission again drew the distinction between expenditures "for campaign purposes" and those committee expenses "of a personal nature." In that opinion, the Commission concluded that a campaign committee could purchase an automobile to be used by the candidate for travel to and from campaign events and events related to the candidate's "official duties and responsibilities as a Member of the House of Representatives." See 2 U.S.C. §439a. Because the Commission was not provided with the specific events for which the automobile was to be used, the Commission warned once again that "[i]f the events in question and the related travel expenses do not qualify under 2 U.S.C. §439a and Commission regulations, and are not otherwise expenditures for campaign-related travel, they would presumably be expenses of a personal nature." (emphasis added). The Commission advised that "[t]he payment of the purchase price should be reported as a campaign expenditure assuming the [candidate's] committee determines that the principal use of the vehicle will be for campaign purposes." (emphasis added).

In Advisory Opinion 1987-1, the Commission concluded that the payment of campaign funds by a principal campaign committee to a candidate for lost wages would constitute a conversion of campaign funds to personal use in violation of §439a. Once again, the question of whether committee payments to a candidate would constitute a violation of §439a turned on whether the payments were directly related to some campaign function or activity. The Commission stated that §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." (emphasis added). In Advisory Opinion 1987-1, the Commission could find no evidence that the proposed payments to the candidate were "in consideration of valuable services" performed by the candidate, particularly since there was no "preexisting contract, debt or obligation that could properly be assumed by the Committee." Id.

II.

Through its advisory opinions, the Commission has drawn a clear distinction between those candidate committee expenditures made for "campaign purposes" and those disbursements made for "personal use." These opinions illustrate that the mere use of an apartment or a car by a candidate does not suddenly transform a rental payment for an apartment or a car loan payment into a legitimate campaign expenditure. Each opinion has required that in order for a campaign committee to pay for a candidate's personal living expenses, e.g., apartment rent or car payments, there must be a related campaign function or activity -- something beyond the simple use of the residence or the car by the candidate. Applying these principles, we consider Advisory Opinions 1992-1 and 1992-4.

A.

The requestor in Advisory Opinion 1992-1 was a federal candidate who asked whether §439a would prohibit his campaign committee from paying him a salary for the provision of "services to the campaign committee, including the management of the campaign and making appearances on behalf of the campaign committee." Advisory Opinion Request 1992-1 at 1 (January 3, 1992). The requestor/candidate explained that the salary would "cover all my personal expenses incurred during my campaign out of my (taxable) salary from my principle [sic] campaign committee. This includes rent, food while at home, child support, health care, utilities and insurance." *Id.* The request also raises the issue of whether certain other expenses for "travel, lodging, and meal expenses while on campaign business" and "photocopying, postage, and telephone expenses while making calls on behalf of the campaign" are prohibited by §439a.

We conclude that §439a prohibits the payment of a salary to a candidate campaigning for federal office. Traditionally and historically, a candidate is involved in campaign strategy and public appearances in support of the candidate's own campaign. These are not new services or additional features which a candidate brings to a campaign; rather, they are activities inherent in any candidate's campaign. To allow the payment of a salary to a candidate for the performance of these functions is to create the fiction that the campaign committee is purchasing something that -- but for the purchase -- it would not otherwise possess. It appears to us that under a candidate's salary arrangement the candidate's campaign committee would be paying the candidate a salary for services it is already receiving. In our opinion, this sort of financial arrangement is inconsistent

with the §439a² ban on the conversion of campaign contributions to personal use.

If a candidate could receive a salary, the personal use ban of §439a would mean very little. Suppose a candidate wanted to buy an item which all agree was completely unrelated to the campaign and was plainly prohibited by §439a. Certainly, the campaign committee could not directly purchase the item for the candidate. But a campaign committee could apparently pay a "salary" to the candidate who, in turn, could purchase the item otherwise prohibited under §439a. We do not think that Congress intended §439a to be so easily circumvented.³

With respect to the second issue raised in Advisory Opinion 1992-1, we find that §439a does not prohibit the payment of expenses for "travel, lodging, and meal expenses while on

2. It is argued that payments for a candidate's salary or personal living expenses are campaign-related if the candidate needed such payments as inducements to become a candidate in the first place or as compensation for using personal savings to campaign. It is unfair, the argument goes, that sometimes candidates have to quit jobs in order to spend the time required to campaign for federal office. This "somebody has to pay the bills" theory fails for several reasons. First, the Commission's previous advisory opinions reject this approach; none of them suggest that reducing a candidate's personal financial plight is a relevant factor. Second, it would be well-nigh impossible to distinguish rationally when one candidate has a real need for use of campaign funds and another candidate doesn't. Would we apply a net assets rule or net monthly income rule? What would be the statutory authority for such demarcations? Third, comparing the financial needs of candidates gets one far afield from the congressional intent behind §439a which was to assure that all candidates would be barred from using campaign funds for personal use.

Holding salary payments for candidate services to be an impermissible personal use of campaign funds is not a "pro-incumbent" approach. Challengers who continue to perform their regular jobs may continue to get paid by their employers, just like incumbent senators or House members. Comparing a challenger who has no job or quits a job to campaign full-time with an incumbent who continues to perform his job while campaigning at other times is not edifying.

3. It is not adequate to suggest that a candidate's opponents and the press would be able to make hay about publicly disclosed salary payments. This is not the legal test of what is personal use. The fact that a payment for a child's vacation in Hawaii is publicly disclosed would not render such payment permissible under §439a.

campaign business" and "photocopying, postage, and telephone expenses while making calls on behalf of the campaign." Advisory Opinion Request 1992-1 at 1 (January 3, 1992) (emphasis added). It appears that the committee plans to make these disbursements for campaign purposes. Because the disbursements are for a campaign-related function or activity, they are not prohibited by §439a.

B.

The requestor in Advisory Opinion 1992-4 was a federal candidate who asked whether he would be able "to defray a reasonable amount of [his] monthly living expenses with campaign contributions" as well as his spouse's monthly living expenses under the Act and the Commission's regulations. Advisory Opinion 1992-4 at 1 (January 13, 1992). These monthly living expenses included "rent, health insurance, some utilities" and "personal money." Id. In the alternative, the requestor asked whether his campaign would be able to employ his wife as a paid campaign staff member.

Under the above-discussed line of advisory opinions, see pages 3-5, supra, we think that the personal use ban contained in §439a prohibits the use of campaign funds to pay for a candidate's personal living expenses. Clearly, "those expenses would exist" whether the candidate was running for public office or not and accordingly are not "incidental" to the candidate's election to federal office. Advisory Opinion 1980-138, supra; see also Advisory Opinion 1981-2, supra ("[E]xpenses which would exist regardless of an individual's election to Federal office are not 'incidental' and may not be paid from campaign funds.") In this advisory opinion request, we can find no evidence that the proposed committee disbursements would be for campaign purposes. For example, there is no evidence that the candidate's residence, for which he pays rent, would be used for any campaign purposes. Rather, it appears that the residence would be utilized solely for the candidate's personal use--just as the residence had been used before he became a federal candidate. We agree with the Commission's conclusion in Advisory Opinion 1980-138: "Payment from excess campaign funds for these living expenses would therefore be a 'personal use' of such funds prohibited by the Act." Advisory Opinion 1980-138, supra.

With respect to the second issue raised, we agree with the Commission's conclusion that "the Act and regulations would permit your campaign committee to hire your wife and pay her a salary to compensate her for services provided to the campaign." Advisory Opinion 1992-4 at 2. In our opinion, this proposed committee disbursement is campaign-related. A campaign must hire staff, and the fact that a staff member is related to the candidate should not preclude that individual's employment. This is not a situation of paying something for nothing. We assume for purposes of this conclusion, however, that the wages and hours of the spouse's employment will be similar to those of the

other paid staff members. If the spouse's wages were artificially inflated, concerns would arise as to whether campaign funds were being evasively directed to her or the candidate's personal use in violation of §439a. Absent such facts, we find that the personal use provision does not prohibit the payment of a salary to the candidate's spouse.

III.

The General Counsel's drafts of Advisory Opinion 1992-1 and 1992-4 conclude that the payment of a candidate's salary and personal living expenses fall outside of the personal use prohibition. In reaching this result, the General Counsel's drafts rely principally on the general theory that wide discretion is accorded a candidate and campaign committee in making disbursements. See, e.g., Draft Advisory Opinion 1992-1 (February 7, 1992) at 3 ("Because of this broad discretion, the Commission concludes that the Committee could enter into a contract with you that specifies the services you propose to provide to the campaign.")

We reject the idea that a campaign committee's broad discretion in making disbursements is without limits. As we have detailed above, see pages 3-5, supra, the Commission has recognized in a long line of advisory opinions that the personal use ban in §439a places restrictions on the normally wide discretion afforded to candidate committees. In these opinions, the Commission has distinguished those expenses which are legitimate campaign expenditures from those candidate personal expenses which are not campaign-related. To the extent that the General Counsel's drafts apply a "wide discretion" rule and mechanically characterize committee disbursements as campaign-related simply because the disbursements are made by a candidate's committee, they fail to apply or even attempt to distinguish a long line of applicable Commission precedent.

Moreover, none of the advisory opinions principally relied upon and discussed in the General Counsel's drafts control the outcome of these issues. For example, the General Counsel's draft in Advisory Opinion 1992-1 relies upon Advisory Opinion 1988-13, supra, for the proposition that a campaign committee may pay a salary to a candidate. Yet, that opinion is readily distinguishable. In Advisory Opinion 1988-13, the Commission allowed a campaign committee to pay a candidate for an asset which the campaign committee did not already have, i.e., use of the candidate's property for campaign office space. By contrast, in Advisory Opinion 1992-1 a campaign sought to pay the candidate for something which it did already have, i.e., candidate public appearances and candidate advice on campaign strategy.

There are similar problems with the General Counsel's draft in Advisory Opinion 1992-4. The draft cites and relies upon a string of cases for the proposition that a campaign committee may

pay for a candidate's living expenses. See Draft Advisory Opinion 1992-4 at 3 (February 7, 1992) citing 1980-49, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5492; Advisory Opinion 1978-5, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5299; Advisory Opinion 1976-53, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5203; and Advisory Opinion 1976-17, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5201. A close examination of these advisory opinions reveals, however, that the General Counsel's draft reads far more into these opinions than the Commission put there. For example, the Commission stated in Advisory Opinion 1980-49:

The Commission concludes that the 1979 Amendments to the Act, specifically the provisions of §439a, do not affect the result reached in Advisory Opinion 1978-5. The Commission has stated in several advisory opinions that candidates and their respective principal campaign committees have wide discretion under the Act as to how campaign funds may be spent. The Commission thus concludes that so far as the Act is concerned your personal living expenses during the course of a campaign may be defrayed from your campaign funds.

(emphasis added). Left unstated in both the text of the advisory opinion and the actual advisory opinion request is the definition of "personal living expenses." Does the phrase include mortgage and car payments or, consistent with the line of advisory opinions discussed supra, does the phrase include only those living expenses that are for a specific campaign purpose?

In order to determine the precise significance of these words, we must trace this language back to its beginnings. Advisory Opinion 1980-49 cites as its chief authority Advisory Opinion 1978-5. Unfortunately, Advisory Opinion 1978-5 (which is also relied upon in the General Counsel's draft) sheds no light on the definition of "personal living expenses." In that opinion, the Commission simply stated that "payments for [the candidate's] personal living expenses would be permissible expenditures under the Act." (emphasis added). But in so finding, the Commission specifically relied on Advisory Opinion 1976-17 (which also is relied upon by the General Counsel's draft) for the proposition that "campaign funds of a vice presidential candidate could be spent to defray living expenses incurred while she was engaged in campaign activity." (emphasis added). Since there is no further explanation or indication in either the text of Advisory Opinion 1978-5 or the advisory opinion request as to what is meant by "personal living expenses," we must turn to Advisory Opinion 1976-17.

In that situation, the Socialist Labor Party ("SLP") asked, inter alia, whether the principal campaign committee of its vice-presidential candidate could reimburse the candidate for subsistence expenses incurred as a SLP field worker. Prior to her nomination, the candidate was employed as a field worker by the national office of the SLP, and engaged in party-building and political education activities on behalf of the SLP in the New England states. For this she received "a daily wage plus reimbursement of travel expenses." Since her nomination, the candidate had continued her field work on behalf of the SLP. The Commission held in Advisory Opinion 1976-17 that the candidate's principal campaign committee could "reimburse her for subsistence expenses incurred as a SLP field worker." (emphasis added). The Commission reasoned:

Generally, a candidate has discretion to determine what expenditures should be made during his or her campaign, and therefore any disbursements made and reported by the campaign committee as expenditures will be deemed to be for the purpose of influencing the candidate's election. Thus, payments from campaign funds to [the candidate] for living expenses, incurred while engaged in either campaign activities or party-building activity, would be permissible expenditures and subject to disclosure under 2 U.S.C. §434.

(emphasis added).

It seems clear to us that Advisory Opinion 1976-17 is the determinant for what the Commission had in mind when it used the phrase "personal living expenses" in Advisory Opinion 1978-5 and 1980-49. Thus, the General Counsel's conclusion that a principal campaign committee may pay for the personal living expenses of a candidate rests principally on Advisory Opinion 1980-49, which in turn rests on Advisory Opinion 1978-5, which in turn rests on Advisory Opinion 1976-17 which stands only for the unremarkable proposition that a campaign may pay for the campaign-related travel expenses of a candidate. These opinions do not support the conclusion for which they are cited in the General Counsel's draft. By misreading the holdings in these opinions, we believe that the General Counsel's draft reaches a conclusion inconsistent with a straightforward reading of §439a and its subsequent advisory opinions.

The General Counsel's draft also relies upon Advisory Opinion 1976-53, supra, for its conclusion that a candidate's committee may pay for the candidate's usual living expenses. In that opinion, the Commission found that committee expenditures for the rental of campaign office space in the candidate's home as well as payments for a "candidate's groceries, heat, mortgage,

etc.," were "permissible under the Act." We note, however, that Advisory Opinion 1976-53 was issued three years before Congress even passed §439a as part of the 1979 Amendments to the Act. As a result, the opinion has no bearing⁴ on whether similar committee payments would be permissible today under §439a.⁵

Finally, the General Counsel's draft points to Commission Advisory Opinions where the Commission has found that "funds donated or paid to a candidate during a campaign that are designated specifically for the candidate's personal (and family) living expenses would be subject to the limits and prohibitions of the Act and Commission regulations." Advisory Opinion 1982-64, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5705, citing Advisory Opinion 1978-40 and 1976-70 at 1 Fed. Elec. Camp. Fin.

4. The General Counsel's draft asserts that Advisory Opinion 1976-53 does apply because "in Advisory Opinion 1980-49 the Commission concluded that the prohibitions of section 439a did not disturb the Commission's prior opinion that during the course of a campaign, campaign funds could be used for living expenses." Draft Advisory Opinion 1992-4 at 3 n.4. What the Commission actually said in Advisory Opinion 1980-49 was "The Commission concludes that the 1979 Amendments to the Act, specifically the provisions of §439a, do not affect the result reached in Advisory Opinion 1978-5." Advisory Opinion 1980-49, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5492 (emphasis added). No mention of Advisory Opinion 1976-53 is made anywhere in the opinion. And as we point out supra, Advisory Opinion 1978-5 sheds no light on the definition of "personal living expenses."

5. If Advisory Opinion 1976-53 were read and applied in the manner in which the General Counsel draft urges, Advisory Opinion 1976-53 would be definitive not only for Advisory Opinion 1992-4 but also for virtually the entire line of advisory opinions decided since then, which discuss the application of §439a. Yet, Advisory Opinion 1976-53 is nowhere to be found as support or authority for the theory which the General Counsel now presses. Indeed, we could find only one citation to Advisory Opinion 1976-53 in the over 800 advisory opinions issued since that opinion was decided in 1976. In Advisory Opinion 1983-1, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5706, the Commission cited Advisory Opinion 1976-53 for the sole proposition that "a principal campaign committee may pay rent to a candidate for campaign office space in the candidate's home." (emphasis added). There is no suggestion made in Advisory Opinion 1983-1 that a campaign committee could pay for a candidate's mortgage absent some campaign purpose.

Guide (CCH) §§ 5341 and 5217, respectively.⁶ It is argued that if payments for a candidate's living expenses are considered a contribution, then the payments for those same living expenses by a candidate's campaign committee should be considered a legitimate campaign expenditure.

We think that it is entirely plausible to treat attempts to indirectly subsidize a candidate's campaign as contributions subject to federal restrictions while at the same time barring any use of campaign funds to pay for personal expenses not related to any campaign function or activity. Congress has chosen to bar some actions even though clearly within the core definition of "contribution" or "expenditure" (see 2 U.S.C. §§441b, 441c, 441e, 441f, 441g), so it is hardly troublesome that Congress would choose to bar actions that would only have the most tenuous of campaign-related purposes.

Moreover, if all payments for a candidate's usual living expenses were considered to be campaign expenditures (and thus could be paid for by the candidate committee), then presumably all payments for such living expenses -- whether paid for by the candidate or the committee -- would be considered campaign expenditures reportable under the Act. See 2 U.S.C. §434(a)(1). ("Each treasurer of a political committee shall file reports of receipts and disbursements...") To our knowledge, the Commission has never required that a candidate report, for example, the candidate's home mortgage payments or car loan payments as an in-kind contribution to the candidate's committee. Yet, that is the unavoidable result if one expands the narrow, loophole-closing approach taken by the Commission and reclassifies all the usual living expenses of an individual as "campaign-related."

IV.

Ironically, Congress enacted the personal use prohibition of §439 largely at the urging of the Federal Election Commission. The year before passage of the personal use ban in §439, the Commission had unanimously approved a legislative recommendation calling on Congress to impose "some strict controls on the conversion of political funds to personal use." 1978 Annual

6. The Commission provided for this loophole-closing rule because "receipt of funds for living expenses would free-up other funds of the candidate for campaign purposes, the candidate would have more time to spend on the campaign instead of pursuing his or her usual employment, and the funds would not have been donated but for the candidacy." Advisory Opinion 1982-64.

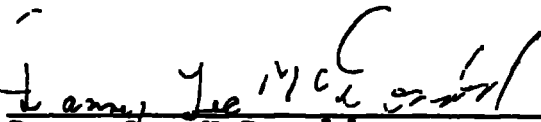
Report at 47.⁷ A decade later, the same Commission which sought "strict controls on the conversion of political funds to personal use" is divided over whether candidates and their committees may spend contributors' money to pay for candidate salaries or living expenses. We strongly believe that Congress did not intend to allow this activity when it enacted the personal use ban in §439a.

5/7/92
Date



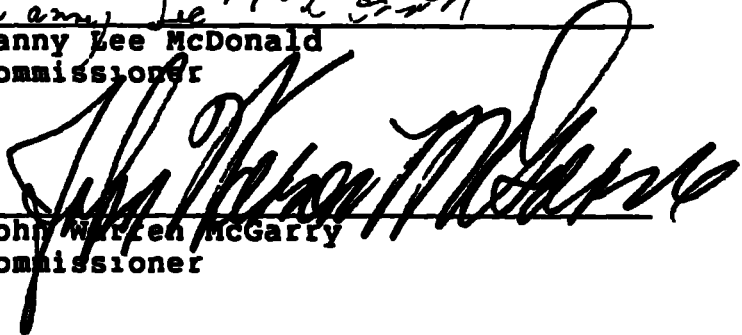
Scott E. Thomas
Vice Chairman

5-5-92
Date



Danny Lee McDonald
Commissioner

5/5/92
Date



John Warren McGarry
Commissioner

7. The "Summary of the [Senate Rules] Committee Working Draft-- [1979] FECA Amendments" specifically cited the Commission's legislative recommendation as its source when it summarized the draft language of what eventually became the personal use ban in §439a. See Legislative History of Federal Election Campaign Act Amendments of 1979 (GPO 1983) at 31, 104, and 147.