



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 6, 1992

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-4

John Michael Cortese
4210 Sarah St. #52
Burbank, CA 91505

Dear Mr. Cortese:

This responds to your letter of January 13, 1992, requesting an advisory opinion regarding the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to financial arrangements you and your wife wish to enter into with your principal campaign committee.

You state that you are considering running for one of California's seats in the U.S. Senate in 1992 as an independent candidate. You note that in California to file as an independent candidate you must obtain 10,000 signatures or pay a fee of \$1,502. These signatures must be collected between April 24 and July 23, 1991. In order to have your name placed on the state ballot, you will need to have 131,132 signatures from registered voters with the signatures to be collected between June 8 and August 7, 1992.

You state that you were laid off from your job on November 12, 1991, and are currently unemployed but receiving unemployment benefits. Your wife is currently employed. You explain that you will need to devote yourself full time to the effort to gather the required signatures. In order to permit you to engage in this effort, you wish use campaign funds for several purposes. You wish to use money received from campaign contributions to defray a reasonable amount of your monthly living expenses.^{1/} You also wish to use campaign contributions to defray your wife's monthly living expenses so that she may assist the campaign. In the alternative, you wish to have the campaign formally employ your wife. You ask whether the described arrangements are permissible under the Act and Commission regulations. You also ask whether the continued receipt of unemployment benefits from the State of California would have any ramifications under the Act and Commission regulations.

The Commission has previously stated that, under the Act and Commission regulations, a candidate and the candidate's campaign committee have wide discretion in making expenditures to influence the candidate's election, but may not convert excess campaign funds to personal use. 2 U.S.C. 431(9) and 439a; Advisory Opinions 1992-1, 1988-13, 1987-2, 1987-1, 1985-42, 1984-8, 1980-138 and 1980-49.

The Commission initially considered whether 2 U.S.C 439a and Commission regulations would permit or bar your principal campaign committee from paying your living expenses and those of your spouse, but could not reach a majority decision by the required four affirmative votes.^{2/} See 2 U.S.C. 437c(c).

The Commission concludes 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. It is the Commission's view that the wide discretion accorded political committees for their expenditures allows the campaign to choose the personnel it wishes to employ.^{3/}

The payments made by your principal campaign committee for your wife's salary are operating expenditures under the Act and must be itemized and reported as such by the Committee. See 2 U.S.C. 434(b)(4)(A).

Your last inquiry concerns the legal implications for purposes of the Act of your continued receipt of unemployment benefits. Under 11 CFR 110.10, personal funds are defined as any assets which, under applicable state law, at the time he or she became a candidate, the candidate had either legal and rightful title or an equitable interest. Salary or other earned income from bona fide employment is also considered part of a candidate's personal funds. Because your unemployment benefits which are based on your prior salary history can be viewed as an entitlement, the Commission concludes that such monies received by you are personal funds. If you use all or part of these funds to further your candidacy, you would be making an advance, loan or contribution to your campaign, and it must be reported as such. No contribution limits are implicated in these transactions, since there is no limit on the amount of your personal funds you may contribute to your campaign. 11 CFR 110.10(a).

The Commission expresses no opinion as to the possible application of California state law or as to any tax ramifications to your proposed transactions, since those issues are outside its jurisdiction.^{4/}

This response constitutes an advisory opinion concerning the 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,

(signed)

Joan D. Aikens
Chairman for the Federal Election Commission

Enclosures (AOs 1992-1, 1988-13, 1987-2, 1987-1, 1985-42, 1984-8, 1980-138 and 1980-49)

ENDNOTES

1/ You explain that your usual contribution to the family's monthly expenses is \$975 which covers rent, health insurance, a portion of the utilities, and \$100 personal money. You state that your wife's usual contribution to the family's living expenses is \$850 per month.

2/ On February 27, 1992, the Commission voted 3-3 on a motion to approve, with amendment, a draft opinion presented in Agenda Document #92-27.

3/ You should note, however, that in Advisory Opinion 1992-1 the Commission considered whether a campaign committee may pay the candidate a salary but was unable to reach a majority decision on that issue by the required four votes. The opinion did allow the reimbursement of a candidate's travel and other campaign related expenses. In addition, special record keeping procedures and reporting rules apply to reimbursed and unreimbursed expenses for campaign related travel. See Advisory Opinion 1992-1.

4/ The Commission does note that the Act and Commission regulations would not pre-empt application of California law, or supersede other Federal statutes, as regards your receipt or termination of unemployment benefits at any time. See 2 U.S.C. s453 and 11 CFR 108.7(a).