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August 10, 1992

Federal Election Commission  
Office of General Counsel  
999 E Street, N.W.  
Washington, D.C. 20463

AOK 1992-34  
20 DAY

Re: Castle For Congress Fund  
Request for Advisory Opinion

Dear Counsel:

The undersigned represents Castle For Congress Fund, a duly authorized principal campaign committee registered with the Clerk of the House of Representatives. Castle For Congress Fund seeks guidance from the Federal Elections Commission pertaining to the application of Commission regulations, to wit: 11 C.F.R. § 106.3, to the use by the candidate, a state officeholder, of a state-provided conveyance.

Facts

The candidate is Governor of the State of Delaware. As such, his daily transportation is in an automobile provided by the state. The automobile is leased by the state on an annual basis from a local dealer. Fuel and maintenance are provided by the Delaware Department of Transportation. The automobile is operated by Delaware State Police Executive Security officers.

The Governor's use of the state-provided automobile extends to virtually all of his daily activities, including campaign-related events. Since such use of the automobile otherwise would constitute a contribution-in-kind, the candidate must reimburse the state for such use.

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And since the candidate's daily use of the vehicle includes both campaign- and gubernatorial-related activities, such reimbursement must be on a prorated basis.

Normally, the proration under these circumstances is done on an actual cost-per-mile basis of the means of transportation actually used for campaign-related activities. See 11 C.F.R. § 106.3(b)(2). Since the actual cost-per-mile of the Governor's automobile is not readily determinable, the issue faced by Castle For Congress Fund is the rate at which the candidate must reimburse the state for purposes of the required proration.

#### Issue

As provided in 11 C.F.R. § 106.3(e), "the reportable expenditure for a candidate who uses government conveyance ... for travel which is campaign-related is the rate for comparable commercial conveyance...." Under the Commission's regulations, this rate should be the "normal and usual rental charge." Cf. 11 C.F.R. § 114.9(e)(2). Unfortunately, in view of the "actual cost-per-mile" calculation required by §106.3(b)(2), there is no per-mile rental rate available for an automobile comparable to that provided for the Governor's transportation by the state. A daily rental rate is available, and, of course, an actual per diem cost could be calculated based on the state's annual lease expense for the vehicle.

Under these circumstances, there appear to be the following possibilities for "the rate for comparable commercial conveyance" to be used in the required proration calculation for purposes of determining the candidate's reimbursement to the state:

1. The actual per diem cost to the state for leasing the automobile;
2. The daily commercial rental rate for a comparable automobile; or
3. The IRS mileage deduction rate.

The committee sought informal guidance from Commission staff on this issue, but it was suggested that a formal advisory

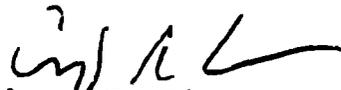
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opinion be sought. As far as I know, the only formal guidance from the Commission on a related issue is Advisory Opinion 1984-48, which pertains to the allocation of travel expenses by a governor-candidate for use of state aircraft.

If I can provide any further information to assist the Commission with this request, please let me know

Respectfully submitted,

  
Anthony G. Flynn

AGF/mrj

cc: Timothy J. Houseal, Esquire