



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

August 28, 1992

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-34

Anthony G. Flynn  
Young, Conaway, Stargatt & Taylor  
P.O. Box 391  
Wilmington, DE 19899-0391

Dear Mr. Flynn:

This responds to your letter dated August 10, 1992, requesting an advisory opinion on behalf of the Castle For Congress Fund ("the Castle Committee" or "the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use by the candidate, a state officeholder, of a state-provided automobile.

Michael N. Castle is a candidate for the Republican nomination for the at-large House seat from Delaware. Presently, he is the Governor of the State of Delaware. His daily transportation, therefore, is in an automobile leased by the State from a local dealer on an annual basis. The Delaware Department of Transportation provides the fuel and maintenance, and the Delaware State Police Executive Security officers operate the automobile.

The Governor uses the automobile for virtually all of his daily activities, including campaign-related events. You point out that normally the cost of campaign-related travel is determined on a cost-per-mile basis of the means of transportation actually used. See 11 CFR 106.3(b)(2). You assert that, since the candidate's daily use of the vehicle includes both campaign-related and gubernatorial-related activities, such reimbursement must be made on a "prorated" basis. Since the actual cost-per-mile of the use of the Governor's car is "not readily determinable," you wish to know the rate at which the candidate must reimburse the State.

More specifically, Commission regulations provide that "the reportable expenditure for a candidate who uses government conveyance or accommodations for travel which is campaign-

related is the rate for comparable commercial conveyance or accommodation." 11 CFR 106.3(e). You state that a daily commercial rental rate is available and a per diem cost could be calculated based on the State's annual lease expense for the vehicle. You state, however, that there is no per-mile rental rate available for an automobile comparable to that provided by the State to the Governor, i.e., a base rental charge plus a cost per mile traveled. You propose the following bases for determining the rate for comparable commercial conveyance and the amount required to be reimbursed to the State: (1) the actual per diem cost to the State for leasing the automobile; (2) the daily commercial rate for a comparable automobile; or (3) the IRS mileage deduction rate.

Commission regulations do not provide for a proration between candidate-related and official-related travel. Instead, the regulations provide that where a candidate's trip involves both campaign-related and non-campaign-related stops, the expenditures allocable as campaign-related are calculated on the actual cost-per-mile of the means of transportation actually used, starting at the point of origin of the trip, via every campaign-related stop and ending at the point of origin. 11 CFR 106.3(b)(2) and (e). Where a candidate conducts any campaign-related activity in a stop, the stop is a campaign-related stop. Campaign-related stops do not include any incidental contacts. 11 CFR 106.3(b)(3). The Commission's Explanation and Justification of this regulation further explains that, where a candidate makes one campaign-related appearance in a city, the trip to that city is considered campaign-related. Incidental contacts on an otherwise non-campaign stop do not make the stop campaign-related. House Doc. 95-44, 95th Cong. 1st Sess. (1977) at 50.<sup>17</sup>

In determining the proper rate, the Commission interprets the term "comparable commercial conveyance" to mean a commercial conveyance comparable to the government conveyance actually used (e.g., in terms of size, model, and make). See Advisory Opinion 1984-48. The rate for a comparable commercial conveyance is the normal and usual rental charge, i.e., the price of goods in the market from which they ordinarily would have been purchased or the prevailing commercially reasonable rate for services. 11 CFR 100.7(a)(1)(iii)(B). See Advisory Opinion 1984-48. In view of the use of the commercial market standard, the Commission concludes that your first and third proposals are not applicable to this situation and may not be used as a basis for determining the cost-per-mile. Instead, the Commission focuses on your second proposal, the daily commercial rate for a comparable automobile.

Although the Committee was unable to find a comparable commercial rate based on mileage, a daily commercial rate for a comparable vehicle (with unlimited mileage) is still allocable on a cost-per-mile basis. The Committee would calculate the number of miles traveled that day and divide the daily commercial rental charge by that amount. That would be the cost-per-mile that day of the transportation used. Then, using the method described at 11 CFR 106.3(b)(2), the Committee will calculate the mileage for campaign-related stops and multiply that mileage by the cost-per-mile.

For example, assume that the commercial rental rate is \$150 a day. The Governor travels one morning from Dover to Point A 20 miles away for a non-campaign related trip. From Point A he travels 30 miles to Point B for a campaign-related stop. That afternoon, he travels 20 miles from Point B to Point C for a campaign stop. Then he travels 40 miles to Point D for non-campaign

event. That evening, he returns to Dover, a 40-mile trip from Point D. The vehicle has traveled 150 miles that day, resulting in a cost-per-mile of one dollar. To determine his campaign trip, you would calculate the mileage from Dover to Point B (e.g., 40 miles) to Point C (20 miles) back to Dover (e.g., 60 miles). Although the vehicle traveled 150 miles that day, the campaign mileage, as determined by the fictional trip only to campaign stops, would be 120 miles. At a cost-per-mile of one dollar, the Castle Committee would reimburse the State in the amount of \$120.<sup>2/</sup> For days in which there are no campaign-related stops, there will be no payment to the State by the Committee.

The Commission notes that a State Police Executive Security officer will operate the vehicle. Commission regulations provide that if a candidate/officeholder is legally authorized to be accompanied by staff and equipment, the cost of such staff and equipment need not be included in the expenditures attributed to the campaign. 11 CFR 106.3(e). Your description indicates the authorized use of a State driver. Therefore, in ascertaining the commercial rental rate, the Castle Committee does not have to include the cost for a driver. See Advisory Opinion 1984-48.

Finally, the Castle Committee should note that there are reporting requirements with respect to its disbursements to the State for campaign travel. 2 U.S.C. 434(b). Commission regulations require the reporting of "[a]ll expenditures for campaign-related travel paid for by a candidate from a campaign account or by his or her authorized committees" or by another political committee. 11 CFR 106.3(a).<sup>3/</sup> See 11 CFR 106.3(b)(2) and (3) and (e). The Committee should retain the records on which its travel expense determinations and allocations are based. See 11 CFR 104.14(b) and Advisory Opinion 1984-48.

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,

(signed)

Joan D. Aikens  
Chairman for the Federal Election Commission

Enclosure (AO 1984-48)

#### ENDNOTES

1/ For a further explanation of a campaign-related stop and incidental contacts, see the above-cited Explanation and Justification. Id.

2/ For a gasoline charge payable to the State, the Committee may take the usual and normal commercial gasoline charge per gallon and determine the overall mileage per gallon, thus arriving at a cost-per-mile. Then, the Committee would multiply that figure by the mileage of the fictional trip consisting of campaign stops.

3/ This also applies to expenses for campaign-related travel if paid for by the candidate from personal funds. 11 CFR 106.3(b)(1).