



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 23, 1993

Ms. Sylvia Panetta
c/o Citizens for Congressman Panetta
Post Office Box 93940
Monterey, California 93940

Re: Advisory Opinion Request 1993-6

Dear Ms. Panetta:

This responds to a letter dated March 15, 1993, from J. Breck Tostevin, Treasurer of Citizens for Congressman Panetta, former United States Representative Leon Panetta's authorized campaign committee. The letter requests an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to certain uses of excess campaign funds by Mr. Panetta, who currently holds the position of Director of the Office of Management and Budget ["OMB"]. Mr. Panetta served as a Member of Congress from January 1977 (the 95th Congress) through January 21, 1993 (a portion of the 103d Congress).

The Act at 2 U.S.C. § 439a sets out how excess campaign funds may be used. It first gives specific examples and then states generally that, in addition, they "may be used for any other lawful purpose." However, Members of Congress who serve in the 103d Congress, such as Mr. Panetta, may not convert these funds "to any personal use, other than to defray any ordinary and necessary expenses incurred in connection with [the former Member's] duties as a holder of Federal office."

The letter asks a series of questions as to whether specific expenditures from excess funds are permissible under the Act. The first question involves money spent for lodging under the following circumstances.

During the month of January, 1993, Mr. Panetta stayed with his family at a Washington, D.C. hotel for two weeks during the presidential inaugural period. (His family does not reside in the Washington, D.C. area.) On January 21,

1993, Mr. Panetta resigned from the office of U.S. Representative in order to be sworn in to his current position, which occurred on January 22, 1993. He remained with his family at the same hotel until January 29, 1993.

The hotel space where Mr. Panetta stayed afforded him office space during the transition in order to hold necessary meetings as well as to have space in which to work during the transitional period. This work included both OMB work, final elements of work from his congressional office, and work on the logistics of the move from the congressional office to OMB. The space was also used to entertain and meet with constituents who visited Washington, D.C. during this two week time-frame.

The Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. § 437f(a). Commission regulations explain that such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c).

The Commission considers this letter an advisory opinion request (Advisory Opinion Request 1993-6) and is in the process of drafting a response. However, in view of the foregoing requirements for a complete description of the underlying facts, you will need to provide further information with regard to your first question, as specified in the following questions.

(1) Please state what Mr. Panetta's living arrangements in Washington, D.C. were at the time he rented hotel lodging for use during the inaugural period.

(2) On what date did Mr. Panetta have to vacate his office in the House of Representatives?

(3) Was Mr. Panetta provided with transitional office space either by President Clinton's Transitional Office, or by the Office of Management and Budget, for the period between the time he was nominated as Director of OMB but before the date this nomination was approved?

If you have any questions about the advisory opinion process; or this letter, please contact Mr. Litchfield or Rita Reimer, the attorney assigned to this matter. This letter is being sent by fax, given your request for prompt consideration, with a first class mailing to follow. You may

reply by fax, if desired, but the original of your signed reply letter is also needed for record purposes. The fax number for this office is (202) 219-3923.

Sincerely,

Lawrence M. Noble
General Counsel

BY:

N. Bradley Litchfield
Associate General Counsel

Supplement to
AOR 1993-6

CITIZENS FOR CONGRESSMAN PANETTA
Post Office Box 2703
Monterey, California 93940

March 25, 1993

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RECEIVED
GENERAL COUNSEL DIVISION

M. Bradley Litchfield
Associate General Counsel for
Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
Office of General Counsel
999 E. Street, N.W.
Washington, D.C. 20463.

Dear M. Litchfield:

Thank you very much for your recent letter of March 23, 1993 to Mrs. Sylvia Panetta in which you ask for more details regarding the reasons for hotel lodging accommodations for former Congressman Leon E. Panetta and his family during the inaugural period in January 1993. I have consulted with Mr. and Mrs. Panetta and have obtained answers to the following questions you pose.

1) In your letter you ask what Mr. Panetta's living arrangements in Washington, D.C. were at the time he rented hotel lodging for use during the inaugural period. Upon resignation from his seat in Congress and immediately following the swearing in to his position as Director of the Office of Management and Budget (OMB), he took steps to move from his prior residence which was a rental arrangement along with three other members of Congress in a townhouse on Capitol Hill. Because the OMB legal counsel advised Mr. Panetta that a conflict of interest arose if he were to continue to reside with members of the legislative branch, Mr. and Mrs. Panetta immediately began to look for other permanent living arrangements for him. During that short interim period, Mr. Panetta remained in the hotel with his family. Thus, for those reasons, the Panetta family remained in the hotel until an apartment was located for Mr. Panetta. As soon as this apartment became available, he moved to this new housing which was on January 29, Friday night, the same day that Mrs. Panetta and family returned to California.

2) This questions asks, on what date did Mr. Panetta have to vacate his office in the House of Representatives. He had to leave when he was sworn in as Director of the Office of Management and Budget, again, for purposes of avoiding conflict of interest. This occurred on January 22, 1993. I would point out, also, that

M. Bradley Litchfield

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during this time, his staff was in the process of packing, storing and archiving his files; thus, the office, particularly his own office space, was in considerable flux with that space being used for the actual sorting, boxing and disposing. This rendered the space that Mr. Panetta had previously used while a member of Congress virtually unusable for private work as well as for meetings with other people.

3) The last question asks, was Mr. Panetta provided with transition office space either by President Clinton's transitional office or by the Office of Management and Budget for the period between the time he was nominated as Director of OMB but before the date this nomination was approved. The answer is no, he was not provided with any such space by either of those two entities.

Finally, I would point out that Mr. Panetta not only carried out his congressional work up until he resigned, he had also begun intense work with the Clinton Transition team on budgetary matters prior to his swearing in thus necessitating a stable, consistent working location during the transition.

If you have any more questions, please do not hesitate to contact me or Mrs. Panetta again.

Sincerely,



J. Breck Testevin, CPA
Treasurer
Citizens for Congressman
Panetta