



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

SEP 15 11 43 AM '94

September 15, 1994

**MEMORANDUM**

**TO:** The Commission

**THROUGH:** John C. Suzina  
Staff Director

**FROM:** Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Jonathan M. Levin  
Senior Attorney

**SUBJECT:** Draft AO 1994-26

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for September 22, 1994.

**AGENDA ITEM**  
For Meeting of: SEP 22 1994

Attachment

**DRAFT**

1  
2  
3 ADVISORY OPINION 1994-26

4 Scott Douglas Cunningham  
5 Scott Douglas Cunningham Campaign Committee  
6 4917 Evergreen  
7 Bellaire, TX 77401

8 Dear Mr. Cunningham:

9 This responds to your letters dated July 18 and July 21,  
10 1994, as supplemented by informational letters, requesting an  
11 advisory opinion concerning the application of the Federal  
12 Election Campaign Act of 1971, as amended ("the Act"), and  
13 Commission regulations to the use of funds for your campaign  
14 from revolving lines of credit held by you for a number of  
15 years.

16 You are a House candidate from the 22nd District of  
17 Texas. You filed as a candidate on January 18, 1994.  
18 Between 1985 and 1989, you opened lines of credit with two  
19 banks and another lending entity. For the past three to four  
20 years, the lines have been at a level of \$20,000 each, and  
21 they remain at that level. You anticipate making draws on  
22 these lines up to \$50,000 to cover expenditures for graphics,  
23 printing, advertising, and other campaign-related expenses.  
24 You plan to make draws during August, September, and October,  
25 1994, in increments of approximately \$5,000.

26 The lines of credit were opened with (1) First Republic  
27 Bank, which became NCNB, and is now NationsBank, (2) Citibank  
28 Ready Credit, and (3) Security Pacific Executive/Professional  
29 Services, which is a BankAmerica company. The agreements  
30 require you to repay the loan on an installment basis at a

3 certain rate of interest. You state that the repayment terms  
4 for each are based upon quarterly interest rates of roughly  
5 three percent or an annual rate of 12 percent of the  
6 outstanding principal balance. You state that annual rate is  
7 based on average 90 day Treasury Bill floating rates so the  
8 actual quarterly rate may vary plus or minus half a percent.

9 The lines of credit were signature lines granted on the  
10 basis of your credit. You are the sole owner of the line of  
11 credit accounts and no other person is jointly or severally  
12 liable with you on any portion of the accounts. The source  
13 of funds for repayment of the lines has been and continues to  
14 be personal income derived from your law practice. You have  
15 never used the lines previously for campaign purposes, and  
16 you have not used the lines since the beginning of the  
17 campaign.

18 You wish to know whether borrowing funds on the  
19 foregoing signature line of credit "where there exists an  
20 executed loan agreement documenting an obligation to repay on  
21 a fixed installment basis with interest" entails a method  
22 that assures repayment within 11 CFR 100.7(b)(11)(ii). Your  
23 inquiry may be characterized more completely as whether you  
24 may draw on these lines of credit for campaign purposes and  
25 how such draws should be disclosed.

26 Commission regulations provide that any loan of money by  
27 a state bank, a Federally chartered depository institution,  
28 or a depository institution whose deposits or accounts are  
29 insured by the Federal Deposit Insurance Corporation is not a  
30

3 contribution by the lending institution if the loan is made  
4 in accordance with applicable banking laws and regulations  
5 and is made in the ordinary course of business.<sup>1/</sup> A loan will  
6 be deemed to be made in the ordinary course of business if it  
7 bears the usual and customary rate of interest of the lending  
8 institution for the category of loan involved, is made on a  
9 basis which assures repayment, is evidenced by a written  
10 instrument, and is subject to a due date or amortization  
11 schedule. 11 CFR 100.7(b)(11). See 2 U.S.C.  
12 §431(8)(B)(vii).

13 Commission regulations specify two sources that will  
14 meet the Commission's standard for assurance of repayment.  
15 These are: traditional collateral, with a perfected security  
16 interest; and other sources of repayment, including future  
17 income (e.g., public financing funds, fundraising, and  
18 interest income). Loans which do not meet the criteria set  
19 out by the regulations for these two sources are considered  
20 on a case-by-case basis, based on the totality of their  
21 circumstances, to determine whether they were made on a basis  
22 which assures repayment. Explanation and Justification,  
23 Regulations on Loans from Lending Institutions to Candidates  
24

25  
26 <sup>1/</sup> When a candidate receives a loan for use in connection  
27 with his or her campaign, the candidate receives the loan as  
28 an agent of his or her authorized committee. 2 U.S.C.  
29 §432(e)(2); 11 CFR 101.2 and 102.7(d). Such loans are  
30 reportable by the committee and itemizable as loans from the  
lender to the committee, rather than as loans from the  
candidate to the committee. 2 U.S.C. §434(b)(3)(E); 11 CFR  
104.3(a)(3)(vii)(B) and 104.3(a)(4)(iv). Advisory Opinion  
1985-33.

3 and Political Committees, 56 Fed. Reg. 67118, 67119 (December  
4 27, 1991); 11 CFR 100.7(b)(11)(i)(A) and (B), and (ii).

5 According to the Explanation and Justification of the  
6 applicable regulations, the rules follow the approach that  
7 "[l]ines of credit are considered bank loans, to be treated  
8 in the same manner as other loans from lending institutions."  
9 56 Fed. Reg. 67118, 67119 (December 27, 1991). See also 11  
10 CFR 100.7(b)(11)(i), 100.8(b)(12)(i), and 104.3(d)(1). The  
11 lines of credit at issue are not secured by any collateral.  
12 Although your personal income has been the source of  
13 repayment, you have not made other arrangements required by  
14 the regulations to accompany loans made on the basis of  
15 future receipts, e.g., the establishment of a separate  
16 account to access funds or an assignment by the candidate to  
17 the bank to access funds. See 11 CFR 100.7(b)(11)(i)(B)  
18 (1)-(5). In addition, your request does not present a  
19 situation of lines of credit presently being acquired or  
20 renegotiated under these regulations.

21 Your proposal to use these lines of credit may be  
22 considered under the case-by-case option provided at 11 CFR  
23 100.7(b)(11)(ii). The Commission notes that these lines of  
24 credit do not appear to have been obtained by you for the  
25 purpose of influencing any candidacy or other political  
26 purpose. These lines of credit, based on your personal  
27 financial status, were issued years ago, significantly  
28 pre-dating your candidacy by at least five years, and are  
29 evidence of a longstanding relationship between the lending  
30

3 entities and you. The terms of the agreements, e.g., the  
4 interest rates and other provisions for repayment (including  
5 provisions relating to overdue payments, cancellation of the  
6 line by the bank, and acceleration of payments) do not appear  
7 to be out of the ordinary or unduly favorable to you;  
8 documents submitted by you indicate that these agreements are  
9 standard lines of credit issued by the bank for other  
10 customers. Based on the pre-existing and longstanding  
11 nature of these arrangements, as well as the terms, the  
12 Commission concludes that you may make the proposed draws for  
13 the purposes of your House campaign from the entities that  
14 qualify as depository institutions under 11 CFR  
15 100.7(b)(11)).<sup>2/</sup>

16 One of these lines is with NationsBank of Texas, which  
17 is a national bank and an FDIC-insured depository. Another  
18 line is labelled Citibank Ready Credit and is from Citibank  
19 itself, which is also a national bank and FDIC insured. The  
20 third line provider, Security Pacific Executive/Professional  
21 Services is a BankAmerica Company and a division of the  
22 BankAmerica Corporation, which owns banks and other  
23 subsidiaries. It is an operating arm of the BankAmerica  
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25 <sup>2/</sup> Commission regulations provide that a candidate may make  
26 unlimited expenditures for his or her campaign from personal  
27 funds. 11 CFR 110.10(a). Although the availability of funds  
28 from a line of credit, an availability that the bank (which  
29 still holds and controls the funds) may withdraw for a number  
30 of reasons, does not meet the definition of personal funds  
under Commission regulations at 11 CFR 110.10(b), the funds  
are at least as accessible to the candidate as "gifts of a  
personal nature which had been customarily received prior to  
candidacy." 11 CFR 110.10(b)(2).

3 Corporation that extends lines of credit. From the  
4 information received, it does not appear that Security  
5 Pacific Executive/Professional Services is a qualified  
6 depository institution. The Commission concludes that you  
7 may use the lines of credit from the first two institutions.

8 Commission regulations set out specific rules for the  
9 reporting of bank loans received for Federal campaign  
10 purposes, including lines of credit. They require that, when  
11 a candidate or political committee obtains a loan, or  
12 establishes a line of credit, the committee should make  
13 several detailed disclosures on Schedule C-1: (i) the date  
14 and amount of the loan or line of credit; (ii) the interest  
15 rate and repayment schedule of the loan or each draw on the  
16 line of credit; (iii) the types and value of traditional  
17 collateral or other sources of repayment securing the loan or  
18 line of credit described in 11 CFR 100.7(b)(11)(i)(A) or (B),  
19 and whether that security interest is perfected; and (iv) an  
20 explanation of the basis of the credit established if the  
21 bases in (iii) are not applicable. 11 CFR 104.3(d)(1)(i)-  
22 (iv). Since the lines of credit at issue were not obtained  
23 for campaign purposes, your committee need not disclose the  
24 foregoing information for a line until the reporting period  
25 during which the line is first drawn upon for campaign  
26 purposes. At that point, the committee must disclose the  
27 source of the line and the information required in  
28 subsections (i) [including the date of the granting of the  
29 line and the first campaign draw], (ii), and (iv) cited  
30

3 above. You should also explain that this line was taken out  
4 well in advance of the campaign (as evidenced by the date of  
5 the granting of the line) and was not granted or altered in  
6 anticipation of its use for or during any political  
7 campaign.<sup>3/</sup>

8 Section 104.3(d)(1)(v) requires a certification from the  
9 lending institution that the borrower's responses to (i)-(iv)  
10 are accurate to the best of the lender's knowledge, that the  
11 loan or line of credit was made or established on terms and  
12 conditions no more favorable at the time than those imposed  
13 for similar credit granted to borrowers of comparable credit  
14 worthiness, and that the institution is aware of the  
15 requirement for terms which assure repayment. Since the  
16 lending institution was not extending a line of credit for  
17 campaign purposes at the time the line was established, the  
18 lending institutions do not need to comply with this  
19 subsection. At the time the lines were established, you and  
20 the lender presumably would not have contemplated the  
21 possibility that you would draw upon the lines for campaign  
22 purposes, or that the requirements of the Act and regulations  
23 would govern the issuance of the line of credit.

24 Commission regulations require the political committee  
25 to submit a copy of the line of credit agreement which  
26 describes the terms and conditions of the line when it files  
27

28 <sup>3/</sup> The draws should also be disclosed as a loan guaranteed  
29 by the candidate on Schedule A [line 13(a) of the Detailed  
30 Summary Page] and Schedule C. 11 CFR 104.3(a)(3)(vii)(B) and  
(4)(iv).

3 the Schedule C-1 that first discloses draws made against the  
4 line for campaign purposes. You should file either the  
5 original agreement, with any up-to-date amendments, or the  
6 most recent document containing all the terms (e.g., interest  
7 rates, repayment, time requirements) that are applicable at  
8 the time of the draw. 11 CFR 104.3(d)(2).

9 There are continuous reporting requirements in  
10 connection with the draws. Each time an additional draw is  
11 made on a line of credit, this should be reported on Schedule  
12 C-1 and on Schedules A and C. Assuming that the terms of the  
13 line remain unchanged, the committee need not proceed through  
14 all the requirements of 11 CFR 104.3(d)(1) cited above for  
15 each draw, but should include the source of the draw and a  
16 notation as to when the source was first disclosed, the  
17 amount of the draw, and the total outstanding balance on the  
18 line. 11 CFR 104.3(d)(3). For each reporting period in  
19 which there is still a balance to be paid on the line of  
20 credit, the line should continue to be reported. The  
21 Schedule C should indicate the total drawn, the total repaid,  
22 and the remaining balance. 2 U.S.C. §434(b)(8); 11 CFR  
23 104.3(d) and 104.11(a). Advisory Opinion 1985-33. In  
24 addition, each time the interest rate or other repayment term  
25 for the line is altered because of the bank's alteration of  
26 its standard agreement with its line of credit customers, a  
27 Schedule C-1 should be filed for that reporting period. See  
28  
29  
30

3 11 CFR 104.3(d)(1)(ii).<sup>4/</sup>

4 Repayments of the draws on these lines of credit must  
5 originate from contributions that are permissible under the  
6 Act. 11 CFR 110.1(g). Advisory Opinions 1987-30 and  
7 1981-22. If the repayment to the bank comes from you, your  
8 committee must report your payments to the bank as in-kind  
9 contributions to the committee. This would entail disclosing  
10 a contribution from you on Schedule A, an expenditure to the  
11 lender on Schedule B, and the reduction of the amount owed on  
12 Schedule C. Your contribution from your personal funds would  
13 not be subject to the Act's limits. 11 CFR 110.10(a). Any  
14 donations you receive for the purpose of remitting funds to  
15 the lender would be contributions subject to the limits and  
16 prohibitions in the Act. See 2 U.S.C. §§441a, 441b, 441c,  
17 441e, and 441f.

18 This response constitutes an advisory opinion concerning  
19 application of the Act, or regulations prescribed by the  
20 Commission, to the specific transaction or activity set forth  
21 in your request. See 2 U.S.C. §437f.

22 For the Commission,

23 Trevor Potter  
24 Chairman

25 Enclosures (AO 1987-30, 1985-33, and 1981-22)

26  
27  
28 <sup>4/</sup> The Commission notes that the above analysis as to the  
29 use and reporting of lines of credit issued by banks is not  
30 intended to address the use of charge or credit card  
accounts, or checks drawn on credit card accounts.