

18TH DISTRICT, OHIO
2183 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
202-225-8285

DISTRICT OFFICES:
STUEBENVILLE 614-283-3716
ST. CLAIRSVILLE 614-895-4600
NEW PHILADELPHIA 216-343-8112
ZANESVILLE 614-452-7023



COMMITTEES:
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TRANSPORTATION
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RESOURCES AND ENVIRONMENT
VETERANS' AFFAIRS

DOUGLAS APPLIGATE

UNITED STATES HOUSE OF REPRESENTATIVES

December 7, 1994

Office of the Staff Director
Federal Elections Commission
999 E St., N. W.
Washington, D.C. 20463

To Whom It May Concern,

In an effort to comply with current election law, and particularly in light of the recent debate over the "personal use" rule, I wish to obtain from your office an advisory opinion that I can use to guide me in one particular area of expenses.

Since 1976, I maintained the Applegate for Congress Committee as my authorized election committee. Upon my retirement announcement earlier this year, I converted the funds in that committee's account to a political action committee, now referred to as ApplePAC. One of the monthly expenses that I incur and that is paid from ApplePAC is the lease payment on an automobile that is used only for purposes directly related to the PAC.

I wish to be advised on the legality of having my PAC purchase that same vehicle at the conclusion of the one year lease as provided for in that lease. As this lease will expire very soon, it would be helpful to me to have your response as soon as possible.

Your advise and counsel on the above, and any other related factors that you may believe to be pertinent would be appreciated. In responding to me, I would appreciate your response being sent to me at RD 3 Earl Dr., Steubenville, Ohio 43952.

Thank you in advance for your attention to this matter.

With best regards, I remain


DOUGLAS APPLIGATE
U. S. CONGRESSMAN

DA/jh



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 16, 1994

The Honorable Douglas Applegate
RD 3 Earl Dr.
Steubenville, Ohio 43952

Dear Mr. Applegate:

This refers to your letter dated December 7, 1994, on behalf of ApplePAC regarding application of the Federal Election Campaign Act of 1971 ("the Act") to the use of ApplePAC funds for the purchase of an automobile.

You state that since 1976, you have maintained the Applegate for Congress Committee as your principal campaign committee. Upon your retirement announcement earlier this year, you converted the funds in that committee's account to a political action committee, now referred to as ApplePAC. One of the monthly expenses you incurred, and that is now paid by ApplePAC, is the lease payment on an automobile that is used, you state, "only for purposes directly related to the PAC."

You state that you wish to be advised on the legality of having ApplePAC purchase this vehicle at the conclusion of the one year lease, as provided for in the lease.

Your letter raises issues regarding the personal use of campaign funds relating to the leasing and use of committee property. Several advisory opinions have examined this issue. See Advisory Opinions 1992-12 and 1984-59. Also of relevance is Advisory Opinion 1993-22. This opinion pertained, in part, to personal use issues as they related to a multicandidate committee financed from the funds of a terminated principal campaign committee. For your information and guidance, copies of these opinions are enclosed.

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 Honorable Douglas Applegate
Page 2

Your letter lacks a complete description of the facts necessary for an advisory opinion request. Therefore, if after reviewing the enclosed materials you still wish to request an opinion, please provide the following information:

1. You state in your letter that the automobile will be used only for purposes related directly to the PAC. Please describe, in detail, the specific PAC related activities for which the automobile has been used by ApplePAC since ApplePAC's formation. Compare those activities with future vehicle use by the PAC.

2. If in the past the automobile has been used for anything other than ApplePAC related purposes, describe those uses and the proportion, in time and mileage, between non-PAC and PAC use. Also, please identify those individuals who have access to the vehicle, such as possession of keys, and state their duties or functions for ApplePAC.

3. Regarding the current lease agreement, state who is legally obligated on that lease at present and what funds were used to provide any security deposit for the lease. Also state who is currently paying the insurance expenses and expenses associated with the upkeep of the vehicle, such as costs for fuel, operation and maintenance. Please provide a copy of the current lease agreement.

After receiving the above information, this office and the Commission will give further consideration to your inquiry as an advisory opinion request. If you have any questions concerning the advisory opinion process, the enclosed materials, or this letter, please contact the undersigned.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


N. Bradley Litchfield
Associate General Counsel

Enclosures:

Advisory Opinions 1993-22, 1992-12 and 1984-59

ApplePAC

RECEIVED
FEDERAL ELECTION COMMISSION
JAN 13 12 13 PM '95



RD #3, Steubenville, OH 43952

Federal Election Commission
Attn: M. Bradley Litchfield
Associate General Counsel
Washington DC 20463

January 6, 1995

AOR 1995-04

JAN 11 9 00 AM '95

Dear Mr. Litchfield:

In reply to your letter of 12/16/94, I request an opinion on these issues and offer the following information as you requested.

1. As to the use of the funds, they would be used for purposes of political and charitable causes, such as social, culture, economic development, political education and other community purposes.
2. As to who is legally obligated on the lease, I have enclosed a copy of that lease. I am legally obligated. There was no security deposit required however there was a 1991 auto traded in and that automobile had been owned and used by the Applegate for Congress Committee. The ApplePAC fund pays all insurance and other expenses associated with the operation and upkeep of the 1994 vehicle.
3. The automobile in question is now and has been leased to the "Applegate for Congress Committee" and has been used only for political campaign activities during 1994. Betty J. Applegate, who is Treasurer of the fund is the only other person with access to this vehicle. When the fund leased this auto, it was with an oral agreement that the fund could purchase it for an amount equal to the sticker price, less \$2000.00 discount, less the trade of the 1991 vehicle, less the principal amount of the monthly payments. If the fund is not authorized to purchase the vehicle then the equity amount would be lost, plus I would then have to use my personal vehicle for which expenses would be reimbursed by the ApplePAC fund. It seem to me a losing proposition.
4. Another question is whether I would be able to use the automobile for personal reasons from time to time if I would reimburse the fund. It would appear that the LaRocco decision would render this permissible.

Thank You.

Sincerely,

A handwritten signature in cursive script that reads "Douglas Applegate".
Cong. Douglas Applegate (Ret)

FILE LEASE
194 CAD.

VEHICLE LEASE AGREEMENT

These disclosures are provided pursuant to the Federal Consumer Credit Protection Act §161-186

THIS AGREEMENT, made this 18 day of April, 1994, between HANNA CHEVROLET-CADILLAC, INC., an Ohio Corporation having its principal place of business at 315 South Third Street, Steubenville, Ohio; hereinafter called "Lessor" and Applegate For Congress currently residing at 500 Market St. Steubenville, OH 43952; hereinafter called "Lessee", whereby said parties agree as follows:

1. Lessor agrees to lease to Lessee the following vehicle:

LEASE OF
VEHICLE

Year	Make & Model	Body Type	Vehicle ID# Number	Primary Use for Which Leased
1994	Cadillac DeVille	4D	1G6KD52B7 RU270537	() Personal, Family or Household () Business or Agricultural
Describe major items of additional equipment and any service contracts, extended warranties or mechanical repair insurance:				

at the rate set forth below, for a term of 12 beginning on, and accounting from the date of delivery of said leased vehicle, said delivery to be evidenced by a signed delivery receipt, copy of which is attached hereto.

2. Lessee must pay the following initial charges when Lessee signs this Agreement:

TOTAL
PAYMENT DUE
AT
INCEPTION

(A) () Capitalized Cost Reduction	\$ _____	
(B) () Trade-In Allowance	\$ _____	
(C) () Advance Monthly Payment	\$ <u>856.66</u>	
(D) () Refundable Security Deposit	\$ _____	
(E) () Registration Fees	\$ _____	
(F) () Delivery Charge	\$ _____	
(G) () Extended Warranties	\$ _____	
(H) () _____	\$ _____	
(I) () _____	\$ _____	
Total Payment Due at Inception: (Sum of (A) through (I) above)		\$ <u>856.66</u>

3. Lessee agrees to pay the monthly rental specified below for the use of said vehicle hereby leased, said monthly rental to be paid in advance on the date of delivery and on the same date in each month thereafter during the term of this lease. This monthly rental is based on a mileage allowance of -- miles per year for said vehicle leased. Mileage incurred in excess of this amount shall be paid for by the Lessee at the rate of -- cents per mile in addition to the agreed monthly rental, to be adjusted at the end of the lease term.

(A) <input type="checkbox"/> Fixed Monthly Payment	\$ <u>808.17</u>	
(B) <input type="checkbox"/> Maintenance	\$ _____	
(C) <input type="checkbox"/> Insurance	\$ _____	
(D) <input type="checkbox"/> Registration Fees	\$ _____	
(E) <input type="checkbox"/> Sales and/or Use Tax	\$ <u>48.49</u>	
(F) <input type="checkbox"/> _____	\$ _____	
(G) <input type="checkbox"/> _____	\$ _____	
Total Monthly Payment: (Sum of (A) through (G) above)		\$ <u>856.66</u>
<p>4. Term of this Lease: <u> 12 </u> MO The first monthly payment of \$ <u>856.66</u> is due at inception and <u> 11 </u> subsequent payments of \$ <u>856.66</u> are due on the <u> 18th </u> day of each month thereafter.</p>		
5. Total of Basic Monthly Payments:		\$ <u>10,279.92</u>

6. The vehicle subject to this Agreement shall bear license tags as required by the State where the vehicle is to be used and the title thereto shall be registered in the name of the Lessor where registration is required. Initial cost of license tags and registration, and the cost of new license tags upon the expiration of the licensing period shall be paid by the Lessor. Lessor will pay for cost of State Title and License Plates only. Lessee will pay for any sales use and/or title tax required in licensing the vehicle. Lessor will supply all necessary papers to obtain proper registration. The Lessee agrees to pay all storage charges, parking charges, tolls, fines and all taxes whatsoever by whomsoever payable (other than Lessor's Corporate Income, Franchise or Capital Stock taxes and Federal Excise taxes on the original purchase of the vehicle) relating to the vehicle leased hereunder and the rental use or operation thereof. The Lessee shall reimburse Lessor for

any such costs, expenses, fees, charges and taxes imposed on the Lessor or paid by Lessor at Lessee's request. These charges are to be billed to Lessee within ten (10) days after payment by Lessor.

<p>(a) Fees and Taxes: Estimate of total amount Lessee will pay during the term for official fees, registration, certificate of title, license fees and taxes.</p>	<p>\$ <u>606.88</u></p>
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7. (a) Lessee may terminate this lease before the end of the lease term under the following conditions: Paying Balance of Payments Due

The charge for such early termination is None

(b) Lessor may terminate this lease before the end of the lease term under the following conditions: None

Upon such termination Lessor shall be entitled to the following charge(s) for None

(c) To the extent these charges take into account the value of the vehicle at the end of the Lease term, Lessee has the right to an independent professional appraisal.

(d) Either party may terminate this lease as to the leased vehicle at the end of the extended term stipulated under Paragraph 20(b) of this Agreement by giving the other party at least thirty (30) days written notice prior thereto, but in default of such notice, this Lease shall continue as to the lease vehicle on a month-to-month basis until terminated by either party on thirty (30) days written notice.

(e) Should there be a default by the Lessee as to any of the terms and conditions of this Agreement, the Lessor shall have the right to immediately terminate this Lease in its entirety by written notice to Lessee, whereupon all accrued obligations of the Lessee to the Lessor under this Agreement shall immediately become due and payable. Lessor also shall have the right to recover the vehicle leased hereunder immediately with or without legal process.

8. Lessee shall provide public liability and property damage insurance covering the vehicle hereby leased or substituted under standard form vehicle policies with limits of _____ Dollars for each person, _____ Dollars for each accident and _____ Dollars for property damage, which shall be at the expense of Lessee insuring the Lessor

8a. NEW INSURANCE REQUIREMENTS IS \$500,000.00 COMBINED SINGLE LIMITS.

LY
MINATION
> DEFAULT

LIC
BILITY AND
PROPERTY
DAMAGE
INSURANCE

and Lessee, as their interest may appear. All clauses, conditions, requirements, limitations and provisions of the public liability and property damage insurance policy or policies obtained pursuant to this paragraph are hereby incorporated in and made a part of the Vehicle Lease Agreement by reference. Lessee shall make said policies available for inspection by Lessor at any reasonable time and place.

**COLLISION
INSURANCE**

9. Lessee shall provide collision insurance subject to 250.00 deductible on the vehicle covered by this Agreement which shall be at the expense of Lessee. In any case, the initial 250.00, which is not paid by an insurer by reason of a deductible clause, shall be paid by the Lessee.

**FIRE AND
THEFT
INSURANCE**

10. Lessee shall provide fire and theft insurance covering the fair market value of the vehicle which shall be at the expense of Lessee.

**COST OF
INSURANCE**

11. The cost of insurance referred to in Paragraphs Eight (8), Nine (9), and Ten (10), when furnished by Lessor, in excess of annual premiums in effect at time the contract is signed, for any term exceeding the year or prorated part thereof, shall be paid by the Lessee.

12. Present Cost of Insurance:	Annual Premiums	
Public Liability (Limits)	\$ _____	
Property Damage	\$ _____	
Collision (Deductible)	\$ _____	
Fire and Theft	\$ _____	
Total Insurance Annual Premium		\$ _____

**DAMAGES NOT
COMPENSATED
BY INSURANCE**

13. Damages for which the Lessor shall not be compensated by the insurance carrier or carriers under any of the aforesaid policies shall be paid by the Lessee. The term "Damages" as used in this paragraph does not include normal maintenance and repairs.

**INSURANCE
CERTIFICATES**

14. (a) All insurance policies provided as above shall specifically name both the Lessee and the Lessor as assureds thereunder, and the party providing such insurance shall furnish the other party with a certificate or certificates indicating the insurance of the policy in accordance with the terms of this Agreement.

(b) Should the Insurance Carrier with which the Insurance above referred to is placed, be unwilling at any time to insure the Lessee, because of unfavorable accident experience, or other reason, then the Lessee shall be required, within thirty (30) days of the receipt of notice of cancellation,

DRIVERS

to furnish to the Lessor a policy acceptable to the Lessor, insuring the Lessee and the Lessor in the manner and amount set forth in the policy so cancelled, and such policy shall be acceptable to the Department of Motor Vehicles where required. The excess in premium, if any, over the annual rate shall be paid by the Lessee.

15. Lessee agrees to require its drivers to operate the vehicle leased under this Agreement with reasonable care and diligence and to take every reasonable precaution to prevent loss or damage thereof; should any insurance carrier issuing any of the aforesaid policies be unwilling to insure any vehicle because of the driver's unfavorable accident experience, Lessee shall remove such driver.

CONTENTS

16. Lessor does not carry any contents insurance and does not assume any liability for loss or damage to the contents of any leased vehicle; regardless of the circumstances under which loss or damage shall occur.

IDEMNITY

17. Lessee hereby agrees to indemnify and save harmless the Lessor against any and all liability, loss or expense including legal expenses, caused or arising out of the use and operation of the vehicle hereby leased by the Lessee, its agents and servants during the term of this Lease or any extension or renewal thereof, unless otherwise provided herein.

SECURITY INTEREST

18. Although this Agreement is not intended as a security device, should a court later determine that this Agreement was intended to provide security, the only security interest which will have been taken by Lessor is a security interest in the leased vehicle.

LATE PAYMENTS

19. If any payment is not paid within ten (10) days after it is due, Lessee will pay a charge of 5% of the late payment. If the vehicle is used primarily for personal, family or household purposes, the charge will not be more than Three Dollars (\$3.00).

RENEWAL OF LEASE

20. (a) The term of this lease may be renewed or extended as to the vehicle hereunder leased by Agreement of the parties in writing except as limited in (b) below.

(b) Lessor reserves the right to leave any vehicle doing satisfactory service at the end of the lease term in use for an extended term of up to -2- months.

(c) Lessee has no option to purchase the leased vehicle. If Lessee is not in default, Lessee will be given an opportunity to agree to purchase the leased vehicle at its fair market value as determined by Lessor at the end of the lease.

WARRANTIES

21. (a) The vehicle is subject to the manufacturer's warranties which accompany the vehicle and any extended warranties or service contracts purchased by Lessee which are listed in Paragraph One (1) above.

TIRES

(b) Lessee understands that Lessor is not offering any express or implied warranties and the Lessor offers no implied warranties of merchantability or fitness for a particular purpose covering the leased vehicle.

(c) Lessor shall Not replace or furnish -- additional tires during the term of the lease. Car will be returned at the end of the lease with four (4) serviceable tires.

SERVICE AND MAINTENANCE

(d) Lessee will pay for all maintenance and repairs to keep the vehicle in good working order and condition and any other expenses associated with operating the vehicle. Lessee will service the vehicle according to the manufacturer's recommendations as outlined in the Owner's Manual and the Maintenance Schedule folder, or as requested by the manufacturer in connection with any recall campaign. Lessee will return the vehicle at the end of the lease in good condition with no excessive wear and use.

REPLACEMENT

(e) In the event that the leased vehicle shall become totally unfit for operation or be stolen, Lessee shall immediately give Lessor written notice thereof, whereupon Lessor shall make every reasonable effort to replace same with a vehicle of similar make and model which, upon acceptance by Lessee, shall be subject to this Agreement at the same rental and terms specified for the vehicle so replaced.

ASSIGNMENT

22. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, legal representatives and assigns, subject to provisions of Item Twenty-six (26) hereof; but Lessee shall not have the right to assign this Lease, or any interest therein, without the written consent of the Lessor. In the event of assignment of this Lease, or any interest therein by Lessor, Lessee agrees to accept and comply with such notice thereof as it may receive from the Assignee.

RECOVERY OF AUTOMOBILES

23. Upon expiration of the term of this lease as to the vehicle covered hereby, or upon its termination by default under Paragraph Seven (7) hereof, the Lessee at its expense shall return such leased vehicle to the point of original delivery, or at any location mutually agreed upon.

ILLEGAL USE AND CONFISCATION

24. The Lessee shall neither use nor allow the leased vehicle to be used for illegal purposes or otherwise subject the leased vehicle to confiscation. In the event of confiscation, the Lessee agrees to reimburse the Lessor for the fair market value of the leased vehicle confiscated, together with such other expenses as the Lessor may incur as a result thereof.

ADVERTISING ON AUTOMOBILES

25. Lessee shall have the right, at its own expense, to affix to any vehicle leased any appropriate advertisement or marking provided that the Lessee shall remove such advertisement or marking at the end of the lease term, and restore the surface and finish of the vehicle to its original condition. Under no circumstances shall the Lessee use the name of the Lessor in such advertising marking.

BANKRUPTCY

TITLE

SCOPE OF AGREEMENT

26. If any petition in bankruptcy be filed by or against the Lessee during the term of this Lease, or should Lessee make an assignment for the benefit of creditors, or a receiver be appointed for the Lessee, or Lessee be adjudicated a bankrupt, or is a debtor unable to meet its obligations, or if Lessee is a corporation, terminate its existence or undertake any legal steps to terminate its existence or shall willingly or unwillingly be subject to any process of law looking to the liquidation or reorganization of financially embarrassed debtors or creditors, then, and upon the happening of any said events, the Lessor shall have the right to terminate this Lease and treat such act as a default under Paragraph Seven (7e) hereof.

27. It is expressly understood and agreed that this is a contract of leasing only. Lessor shall at all times remain owner of the leased vehicle. Lessee by these presents acquires no ownership, title, property rights or interest in or to the vehicle, accessories and equipment leased pursuant to this Vehicle Lease Agreement beyond Lessee's right to use the vehicle during the lease term.

28. This Agreement constitutes the entire agreement between Lessor and Lessee; and ^{LESSOR'S} Lessee's failure strictly to enforce any provision of this Agreement shall not be construed as a waiver of as excusing Lessee from further performance thereof.

29. This Agreement and the vehicle leased hereunder are subject to General Motors Acceptance Corporations rights and interests in and to such vehicles under any contract or contracts held by General Motors Acceptance Corporation.

30. If any part of this Vehicle Lease Agreement is not valid according to law, all other parts will remain enforceable. The law at the place of signing this Agreement will govern.

AS WITNESS the execution of this Vehicle Lease Agreement by the parties hereto on the day and year first above written;

ATTEST:

LESSEE
[Signature]
Title _____
Witness _____

LESSOR
HANNA CHEVROLET-CADILLAC, INC.
By *[Signature]*
Title President
[Signature]
Witness _____



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 20, 1995

The Honorable Douglas Applegate
RD 3 Earl Dr.
Steubenville, Ohio 43952

RE: AOR 1995-4

Dear Mr. Applegate:

This refers to your letter dated January 6, 1995, on behalf of ApplePAC responding to our December 16, 1994, letter asking questions regarding your proposal to use ApplePAC funds for the purchase of an automobile.

Although this office has acknowledged your letter as presenting a preliminary advisory opinion request, additional information is still needed to clarify the factual circumstances of your proposal. Therefore, please provide the following information.

Your January 6 letter lists the general purposes for which your excess campaign funds would be used by ApplePAC. However, you have not described the specific ApplePAC activities for which the vehicle was used in 1994 and the activities for which it may be used in the future. This information is vital to your inquiry. In giving answers to this question please provide specific examples, rather than general statements of past uses of the vehicle for PAC activity.

You further ask in your January 6 letter whether you would be able to use the automobile "for personal reasons from time to time" if you reimburse the committee for that use. You previously stated that the vehicle "has been used only for political campaign activities during 1994." The lease agreement (paragraph 1) indicates that the apparent primary uses for the vehicle are "Personal, Family or Household [and] Business or Agricultural." In order to understand your plans for mixed uses of the vehicle, please answer the following questions with respect to your use of the vehicle since April 18, 1994, and your proposed future use as well.

1) Estimate the allocation of time and mileage for the vehicle with respect to its use solely for ApplePAC activity and its use solely for your personal or household purposes, including your wife's use of the vehicle for her personal or household or other nonpolitical purposes.

2) Describe in detail (with specific examples) any uses of the vehicle that involve day trips in excess of 50 miles which are (or were) made both for ApplePAC activity and for other activity of a personal or nonpolitical nature.

3) Describe in detail (with specific examples) any uses of the vehicle for trips where lodging away from your principal residence is (or was) taken by you or your wife.

4) Describe in detail (with specific examples) any uses of the vehicle by you or your wife, or by both of you together, that involve transporting other individuals to any destination, whether or not the activity at the destination relates to ApplePAC business. Identify such other individuals transported in the vehicle and describe the nature of their activity at the destination.

Upon receiving your responses to the foregoing questions, this office and the Commission will give further consideration to your inquiry as an advisory opinion request. If you have any questions about the advisory opinion process or this letter, please contact Mr. Litchfield.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


N. Bradley Litchfield
Associate General Counsel



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

March 13, 1995

The Honorable Douglas Applegate
RD 3 Earl Dr.
Steubenville, Ohio 43952

Dear Mr. Applegate:

Re: AOR 1995-4

This refers to our letter dated January 20, 1995, copy enclosed, in which we requested additional information regarding the changed factual circumstances of your request for an advisory opinion. Since then we have not received any written response from you.

Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction with respect to which the request is made. 11 CFR 112.1(c). Your failure to respond to the questions posed in our January 20 letter creates an incomplete factual record. Therefore, unless you respond within 10 days from your receipt of this letter, this office will have to close the file in your request without the issuing of an opinion.

If you have any questions concerning this letter or the advisory opinion process, please contact Mr. Litchfield.

Sincerely,

Lawrence M. Noble
General Counsel

BY: 

N. Bradley Litchfield
Associate General Counsel

Enclosure
January 20, 1994 Letter