



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 21, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-8

The Honorable Bart T. Stupak
Stupak for Congress, Inc.
P.O. Box 143
Menominee, MI 49858

Dear Congressman Stupak:

This responds to your letter dated March 3, 1995, as supplemented by your letter dated April 5, 1995, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the rental by Stupak for Congress, Inc. ("your committee") of office space and equipment from your wife and you.

You wish to have your committee continue to rent as its headquarters the building that contains your former law office. The building is located two miles from your residence and is owned by your wife and you. Your committee will be the only occupant of the building. It will rent the entire office and pay a rent of \$500 per month. You believe that this amount is "at or just below the fair market rental value of the building."^{1/} The building contains all of your campaign supplies and equipment. Your committee will also be responsible for all utilities, i.e., water, electricity, and gas. Your wife and you, as owners of the building, will retain responsibility for the real estate taxes, maintenance, and repair.

In addition, your committee proposes to rent all of the equipment of your former law office, Bart T. Stupak, P.C. The equipment includes a copier, FAX machine, telephone system, computers, printers, desks, and "numerous" other items of office equipment. Your professional corporation would charge your committee a rent of \$200 per month for the equipment.

The Commission has previously stated that, under the Act and Commission regulations, a candidate and the candidate's campaign committee have wide discretion in making expenditures

to influence the candidate's election. The Act provides, however, that the candidate and the campaign committee may not convert excess campaign funds to the personal use of the candidate or any other person. 2 U.S.C. 439a; 11 CFR 113.2(d). Advisory Opinions 1994-22 and 1994-8.

The Commission has recently promulgated new regulations defining what would constitute personal use of campaign funds.^{2/} In general, "personal use" means "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g). The regulations specifically address payments by a committee for rental of a candidate's property, and they provide that personal use includes:

- (E) Mortgage, rent or utility payments –
 - (1) For any part of any personal residence of the candidate or a member of the candidate's family; or
 - (2) For real or personal property that is owned by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.

11 CFR 113.1(g)(1)(i)(E)(1) and (2).

The Commission's Explanation and Justification of these regulations explains the proper application of this definition. It states that, in the past, the Commission has generally permitted campaigns to rent property owned by a candidate or a family member for campaign use, so long as the campaign paid no more than the usual and normal rental. The new rule at paragraph (g)(1)(i)(E) provides, however, that the use of campaign funds to rent all or part of a personal residence of the candidate or a family member is personal use, even if part of the personal residence is being used in the campaign. On the other hand, the cited paragraph permits the use of campaign funds for the rental of property owned by the candidate or a family member, where the property is rented for campaign purposes and is not part of a personal residence of either. A campaign committee may therefore rent, for campaign use, part of an office building owned by the candidate so long as it pays no more than the fair market value. Commission Regulations on Personal Use of Campaign Funds, Explanation and Justification, 60 Fed. Reg. 7862, 7865 (February 9, 1995).

Based on the foregoing, the Commission concludes that your committee may rent the building owned by you and your wife, so long as none of the property being rented includes any part of the personal residence of you or your family.

In stating this conclusion, the Commission also notes that, in the Explanation and Justification, several previous opinions have been superseded by the new regulations. As discussed, to the extent they permit the use of campaign funds for mortgage, rent, or utility payments on any part of the personal residence of the candidate or a member of the candidate's family, these opinions are superseded. See Advisory Opinions 1988-13, 1985-42, 1983-1, and 1976-53.

You have suggested that the rental amount charged may be below the usual and normal charge for rental of the building. Although this avoids the payment of excessive rent and, hence, personal use of campaign funds, the undercharging for rent would constitute something of value to the committee and would thus be an in-kind contribution from your spouse and you. 2 U.S.C. 431(8)(A)(i); 11 CFR 100.7(a)(1), (a)(1)(iii)(A) and (a)(1)(iii)(B).^{3/} See Advisory Opinion 1994-8. Commission regulations provide that a candidate may make unlimited expenditures from personal funds. 11 CFR 110.10(a). An individual other than a candidate, however, is limited to contributions aggregating \$1,000 per election to a candidate and his authorized political committees. 2 U.S.C. 441a(a)(1)(A). This limitation applies to a spouse or a family member of a candidate, as well as to other individuals. Accordingly, half of the difference between the amount of rent paid by your committee and the usual and normal charge for the rent will be a contribution from your spouse. Compare Advisory Opinion 1986-28.^{4/} The aggregate amounts will be subject to the \$1,000 per election limit.

The Commission notes that your wife and you will retain responsibility for the real estate taxes, maintenance, and repair. These are usually the normal expenses incurred by lessors of real property, and the Commission assumes they will be covered by rental payments made by your committee.

Your committee also proposes to rent office equipment, listed above, from your professional corporation. As a corporation, Bart T. Stupak, P.C., would be prohibited from making any contribution to your committee. 2 U.S.C. 441b(a); 11 CFR 114.2(b). Providing use of the equipment at less than the usual and normal rental charge for such equipment would result in a corporate contribution to your committee. 11 CFR 114.1(a)(1). See footnote 3 above (defining "contribution," "anything of value," and "usual and normal charge"). If a usual and normal charge does not exist for the rental of all the equipment as an ensemble from a single vendor, then the amounts charged by your corporation should be based on how these items are grouped in the office equipment rental market and the rental amounts for such groups. See 11 CFR 100.7(a)(1)(iii)(B).

Because 2 U.S.C. 439a prohibits the personal use of committee funds, your committee also should avoid paying your corporation more than the usual and normal charge for the equipment. Excessive payment to your corporation would "unduly augment the earnings of an asset owned by the candidate." Advisory Opinion 1994-8.

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)

Danny L. McDonald
Chairman

Enclosures (AO 1994-22, 1994-8, and 1986-28)

1 In your supplemental letter, you state that, when you were practicing law, your professional corporation paid rent in the amount of \$650 per month, plus utilities, to your wife and you. You further state that a survey of local realtors in 1992, the year you were first elected to Congress, indicated that the fair market rental value was \$750 per month, plus utilities.

2 The new regulations became effective on April 5, 1995. 60 Fed. Reg. 17193-4 (April 5, 1995).

3 The term "contribution" includes giving "anything of value" for the purpose of influencing an election. 2 U.S.C. 431(8)(A)(i); 11 CFR 100.7(a)(1). The term "anything of value" includes the provision of goods or services at less than the usual and normal charge. 11 CFR

100.7(a)(1)(iii)(A). The "usual and normal charge" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. 11 CFR 100.7(a)(1)(iii)(B).

4 In this 1986 opinion, the Commission acknowledged the significance of a campaign's use of real property owned jointly by a candidate and spouse. The Commission concluded that use of the residence for the campaign would not result in a contribution from the candidate or his spouse because it was being used in connection with providing their joint volunteer services to the campaign. See 11 CFR 100.7(b)(4) and 100.8(b)(5).