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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 21 12 50 PM '95

June 21, 1995

MEMORANDUM

AGENDA ITEM
For Meeting of: **JUN 29 1995**

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Paul Sanford
Staff Attorney

SUBJECT: Draft AO 1995-18

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for June 29, 1995.

Attachment

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DRAFT

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3 **ADVISORY OPINION 1995-18**

4 The Honorable James A. Leach
5 Chairman, Committee on Banking and Financial Services
6 United States House of Representatives
7 2129 Rayburn House Office Building
8 Washington, D.C. 20515-6050

JUN 21 12 50 PM '95

9 Dear Mr. Chairman:

10 This responds to your letters of June 16 and May 23,
11 1995, requesting an advisory opinion concerning the
12 application of the Federal Election Campaign Act of 1971, as
13 amended ("the Act"), and Commission regulations, to the
14 proposed use of campaign funds by yourself and other Members
15 of Congress to commission a portrait.

16 You state that it is a tradition of the House of
17 Representatives to honor chairmen of its standing committees
18 by commissioning portraits of them for display in committee
19 rooms. You intend to commission a portrait of the Honorable
20 Henry B. Gonzalez, former Chairman of what was then the
21 Committee on Banking, Finance and Urban Affairs, and to raise
22 additional funds in support of your efforts by soliciting
23 donations from other Members of Congress. You anticipate
24 that the cost of commissioning the portrait will be between
25 \$10,000 and \$50,000. You ask whether federal election laws
26 would permit Members of Congress, such as yourself, to use
27 campaign funds to pay for the commissioning of an official
28 portrait of a former committee Chairman.

29 By using campaign funds to commission a portrait that
30 will be displayed in House committee rooms, you and any other
Members of Congress who contribute will, in effect, be

4 donating campaign funds to the House of Representatives.
5 Although this donation will be in the form of a portrait,
6 rather than in the form of cash, the difference is not
7 significant under the circumstances you describe. Thus, the
8 issue you raise is whether the Act allows Members of Congress
9 to donate campaign funds for the creation of a non-cash asset
10 that will be donated to the House of Representatives.

11 The Act provides, in part, that amounts "received by a
12 candidate as contributions that are in excess of any amount
13 necessary to defray his expenditures . . . may be contributed
14 to any organization described in section 170(c) of title 26,
15 or may be used for any lawful purpose" except that such
16 amounts may not be converted by any person to any personal
17 use. 2 U.S.C. §439a. Commission regulations similarly
18 provide that excess campaign funds may be contributed to any
19 section 170(c) organization or may be used for any lawful
20 purpose, but may not be converted to personal use. 11 CFR
21 113.2(b), 113.2(d).

22 Your request is similar in many respects to Advisory
23 Opinion 1994-20. In that opinion, the principal campaign
24 committee of a Member of Congress owned a recreational
25 vehicle that it wished to donate to a county health
26 department in the Member's district for use as a mobile
27 health clinic. The Commission concluded that the donation
28 was a "contribution to an organization described in section
29 170(c) of title 26" that was expressly permitted by 2 U.S.C.
30 §439a.

4 You and any other Members who contribute will be
5 donating the portrait to the House of Representatives, rather
6 than to a political subdivision of a state government.

7 However, the House of Representatives is an instrumentality
8 of the United States, which is also an "organization
9 described in section 170(c) of title 26," to the extent that
10 the donation is made for exclusively public purposes.^{1/} Thus,
11 your plan to commission this portrait and donate it to the
12 House of Representatives will be permissible under section
13 439a if the donation is for exclusively public purposes.

14 You indicate that the portrait is being commissioned for
15 display in committee rooms, and that, once completed, it will
16 become the official property of the House of Representatives.
17 Assuming the portrait is to remain the official property of
18 the House of Representatives in perpetuity, and will not be
19 transferred or sold to any other person or organization, it
20 appears that this donation is for exclusively public
21 purposes. Therefore, the Commission concludes that the use
22 of campaign funds to commission the portrait is permissible
23 under the Act.^{2/}

24 _____
25 ^{1/} Section 170(c) of title 26 provides, in pertinent part,
26 that any contribution or gift to "[a] State, a possession
27 of the United States, or any political subdivision of any
of the foregoing, or the United States or the District of
Columbia," is a "charitable contribution" if it is "made
for exclusively public purposes." 26 U.S.C. §170(c)(1).

28 ^{2/} In your supplemental letter of June 16, 1995, you state
29 that, while you do not intend to solicit funds from former
Members of Congress, you cannot preclude the possibility
30 that a former Member may contribute to a fund established
for the purpose of commissioning the portrait. Section

3 The Commission expresses no opinion as to any tax
4 ramifications of your proposed donation, nor as to the
5 application of House rules to this situation, because those
6 issues, if any, are not within the Commission's jurisdiction.

7 This response constitutes an advisory opinion concerning
8 application of the Act and Commission regulations to the
9 specific transaction or activity set forth in your request.
10 See 2 U.S.C. §437f.

11
12
13 Sincerely,

14
15 Danny L. McDonald
Chairman

16 Enclosure (AO 1994-20)
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27 (Footnote 2 continued from previous page)
28 439a and the associated regulations govern the use of
29 campaign funds by both present and former Members of
30 Congress. Thus, if a former Member donates campaign funds
in support of your efforts to commission this portrait,
that donation will be permissible under the Act. See
2 U.S.C. §437f(c)(1).