



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 30, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-18

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

Dear Mr. Chairman:

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

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

By using campaign funds to commission a portrait that will be displayed in House committee rooms, you and any other Members of Congress who contribute will, in effect, be donating campaign funds to the House of Representatives. Although this donation will be in the form of a portrait, rather than in the form of cash, the difference is not significant under the circumstances you describe. Thus, the issue you raise is whether the Act allows Members of

Congress to donate campaign funds for the creation of a non-cash asset that will be donated to the House of Representatives.

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

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

You and any other Members who contribute will be donating the portrait to the House of Representatives, rather than to a political subdivision of a state government. However, the House of Representatives is an instrumentality of the United States, which is also an "organization described in section 170(c) of title 26," to the extent that the donation is made for exclusively public purposes.^{1/} Thus, your plan to commission this portrait and donate it to the House of Representatives will be permissible under section 439a if the donation is for exclusively public purposes.

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

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

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

Sincerely,

(signed)

Danny L. McDonald

Chairman

Enclosure (AO 1994-20)

1 In your supplemental letter of June 16, 1995, you state that, while you do not intend to solicit funds from former Members of Congress, you cannot preclude the possibility that a former Member may contribute to a fund established for the purpose of commissioning the portrait. Section 439a and the associated regulations govern the use of campaign funds by both present and former Members of 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).

2 Section 170(c) of title 26 provides, in pertinent part, that any contribution or gift to "[a] State, a possession 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).