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FEDERAL ELECTION COMMISSION  
WASHINGTON, DC 20461

Aug 9 1 50 PM '95

August 9, 1995

MEMORANDUM

TO: The Commission

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

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

N. Bradley Litchfield *N. Bradley Litchfield*  
Associate General Counsel

Michael G. Marinelli *Michael G. Marinelli*  
Staff Attorney

SUBJECT: Draft AO 1995-26

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for August 17, 1995.

**AGENDA ITEM**  
For Meeting of: AUG 17 1995

Attachment

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ADVISORY OPINION 1995-26

The Honorable Frank H. Murkowski  
United States Senate  
706 SH  
Washington, D.C. 20510-0202

# DRAFT

Dear Senator Murkowski:

This refers to your letters dated June 26, and July 14, 1995, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations, to the use of campaign funds for certain expenses relating to the use of health club facilities.

Your principal campaign committee is Murkowski '98 (the "Committee"). You ask whether Committee funds may be used to pay annual dues (approximately \$250) for your membership in the Washington Athletic Club of Seattle, Washington ("the Club"). You state that it would be your intention that "[Club] facilities are used for campaign fundraising primarily." You explain that you have used the Club facilities for fundraising events in connection with your Senatorial re-election efforts for the past 15 years. You state that as a consequence of so many Alaskan activities being held in Seattle, it is necessary to raise funds in Washington State. You describe the various privileges and services associated with your Club membership; these include receptions, meal services and overnight accommodations. You affirm that you "have only used these club facilities in election cycles - 1980, 1986, 1992 for campaign purposes." You also state that "incidental expenses associated with the

3 [Club] membership have been paid by me personally." It  
4 appears from your description that these Club expenses are  
5 for your meals and overnight lodging when you stay overnight  
6 at the Club in connection with a fundraising event.

7 Under the Act and Commission regulations, a candidate  
8 and the candidate's campaign committee have wide discretion  
9 in making expenditures to influence the candidate's election,  
10 but may not convert excess campaign funds to personal use. 2  
11 U.S.C. §§431(9) and 439a; 11 CFR 113.1(g) and 113.2; see also  
12 Advisory Opinions 1995-23 and 1995-20.

13 The Commission's newly revised regulations provide  
14 guidance regarding what would be considered personal use of  
15 campaign funds.<sup>1/</sup> Personal use is defined as "any use of  
16 funds in a campaign account of a present or former candidate  
17 to fulfill a commitment, obligation or expense of any person  
18 that would exist irrespective of the candidate's campaign or  
19 duties as a Federal officeholder." 11 CFR 113.1(g).

20 Under 11 CFR 113.1(g)(1)(i), personal use includes but  
21 is not limited to the use of funds in a campaign account for  
22 dues, fees or gratuities at a country club, recreational  
23 facilities or other nonpolitical organization, unless they  
24 are part of the costs of a specific fundraising event that

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1 The relevant new regulations were published in the Federal  
27 Register on February 9, 1995, (60 Fed. Reg. 7862) with an  
28 effective date of April 5, 1995 (60 Fed. Reg. 17193). The  
29 rules will be published in the 1996 edition of the Code of  
30 Federal Regulations at 11 CFR 100.8(b)(22), 104.3(b)(4),  
113.1(g), and 113.2.

3 takes place on the organization's premises.<sup>2/</sup> In discussing  
4 application of this per se standard to dues, fees or  
5 gratuities, the Commission stated that the fundraising event  
6 exception "does not cover payments made to maintain unlimited  
7 access to such a facility, even if access is maintained to  
8 facilitate fundraising activity. The exception is limited to  
9 payments for the costs of a specific fundraising event."  
10 Federal Register, February 9, 1995 (60 Fed. Reg. 7862, 7866).

11 You have stated that you maintain your Club membership  
12 primarily to have access to Club facilities for campaign  
13 purposes. Applying the above rule, the Commission concludes  
14 that the use of campaign funds to pay for Club membership  
15 dues would constitute personal use under 2 U.S.C. §439a and  
16 11 CFR 113.1(g). Thus, your campaign funds may not be used  
17 for this expense. Nonetheless, campaign funds may be used  
18 for any costs that are separate and distinct from membership  
19 dues and that are associated only with the use of Club  
20 facilities for specific fundraising or other campaign events.

21 Meal and travel expenses, including subsistence expenses  
22 incurred during campaign travel, require a different  
23 analysis. The regulations state that the Commission will  
24 determine on a case by case basis whether uses of campaign

25 2/ Under section 113.1(g)(1)(i), other categories listed as  
26 per se personal use include but are not limited to funds used  
27 for the following items: household food items; funeral,  
28 cremation or burial expenses; clothing; tuition payments not  
29 associated with training campaign staff; mortgage, rent or  
30 utility payments; tickets to non-campaign or non-officeholder  
entertainment; and salary payments to family members unless  
paid for bona fide, campaign-related services.

3 funds for these expenses would fulfill a commitment,  
4 obligation or expense that would exist irrespective of the  
5 candidate's campaign or duties as a Federal officeholder,  
6 and, therefore, would be personal use. 11 CFR  
7 113.1(g)(1)(ii)(A). You have indicated in your request that  
8 you have certain incidental expenses, apart from Club  
9 membership dues, that are associated with your use of Club  
10 facilities for campaign events. Expenses such as meals and  
11 lodging would be clearly attributable to your campaign if  
12 they are incurred by you to attend a campaign event whether  
13 held at the Club or elsewhere. Therefore, campaign funds  
14 from your committee may be used to pay these expenses.<sup>3/</sup>

15 The cost of travel, meals and lodging expenses, as well  
16 as the costs to use Club facilities for fundraising purposes  
17 consistent with this advisory opinion, should be reported as  
18 an operating expenditure by your Committee, with the purpose  
19 noted. See 11 CFR 104.3(b)(2) and (b)(4)(i); see also  
20 Advisory Opinions 1995-23 and 1995-20.

21 The Commission expresses no opinion regarding the  
22 application of Senate rules or any tax ramifications of the  
23 proposed transaction, because these issues are not within its  
24 jurisdiction.

25 This response constitutes an advisory opinion concerning

26 <sup>3/</sup> Based on the information contained in your request, the  
27 Commission assumes that Club membership dues provide access  
28 to Club services and facilities, but that additional payments  
29 are necessary for members to take meals and lodging at Club  
30 facilities or to use them for all campaign events, including  
fundraising events.

1  
2 AO 1995-26  
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3 application of the Act, or regulations prescribed by the Com-  
4 mission, to the specific transaction or activity set forth in  
5 your request. See 2 U.S.C. 5437f.

6  
7 Sincerely,

8  
9 Danny L. McDonald  
Chairman

10 Enclosures (AOs 1995-23 and 1995-20)  
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