



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 18, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-26

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

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

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, but

may not convert excess campaign funds to personal use. 2 U.S.C. 431(9) and 439a; 11 CFR 113.1(g) and 113.2; see also Advisory Opinions 1995-23 and 1995-20.

The Commission's newly revised regulations provide guidance regarding what would be considered personal use of campaign funds.^{1/} Personal use is defined as "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).

Under 11 CFR 113.1(g)(1)(i), personal use includes but is not limited to the use of funds in a campaign account for dues, fees or gratuities at a country club, recreational facilities or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises.^{2/} In discussing application of this per se standard to dues, fees or gratuities, the Commission stated that the fundraising event exception "does not cover payments made to maintain unlimited access to such a facility, even if access is maintained to facilitate fundraising activity. The exception is limited to payments for the costs of a specific fundraising event." Federal Register, February 9, 1995 (60 Fed. Reg. 7862, 7866).

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

Meal and travel expenses, including subsistence expenses incurred during campaign travel, require a different analysis. The regulations state that the Commission will determine on a case by case basis whether uses of campaign funds for these expenses would fulfill a commitment, obligation or expense that would exist irrespective of the candidate's campaign or duties as a Federal officeholder, and, therefore, would be personal use. 11 CFR 113.1(g)(1)(ii)(A). You have indicated in your request that you have certain incidental expenses, apart from Club membership dues, that are associated with your use of Club facilities for campaign events. Expenses such as meals and lodging would be clearly attributable to your campaign if they are incurred by you to attend a campaign event whether held at the Club or elsewhere. Therefore, campaign funds from your committee may be used to pay these expenses.^{3/}

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

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

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 (AOs 1995-23 and 1995-20)

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

2 Under section 113.1(g)(1)(i), other categories listed as per se personal use include but are not limited to funds used for the following items: household food items; funeral, cremation or burial expenses; clothing; tuition payments not associated with training campaign staff; mortgage, rent or 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 Based on the information contained in your request, the Commission assumes that Club membership dues provide access to Club services and facilities, but that additional payments are necessary for members to take meals and lodging at Club facilities or to use them for all campaign events, including fundraising events.