



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Dec 8 10 42 AM '95

December 8, 1995

**SUBMITTED LATE
AGENDA ITEM**
For Meeting of: DEC 14 1995

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael G. Marinelli
Staff Attorney

SUBJECT: Draft AO 1995-42

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for December 14, 1995.

Attachment

DRAFT

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3 **ADVISORY OPINION 1995-42**

4 **The Honorable Jim McCrery**
5 **McCrery for Congress**
6 **P.O. Box 4650**
7 **Shreveport, LA 71134-0650**

8 **Dear Mr. McCrery:**

9 **This refers to your letter dated November 1, 1995,**
10 **concerning the application of the Federal Election Campaign**
11 **Act of 1971, as amended ("the Act"), to the use of campaign**
12 **funds to provide child care to your infant son.**

13 **You are currently serving as a member of the U.S. House**
14 **of Representatives representing the 5th Congressional**
15 **District of Louisiana and are campaigning for re-election.**
16 **Your principal campaign Committee is McCrery for Congress**
17 **("the Committee"). You explain that your wife often**
18 **accompanies you to campaign-related events such as**
19 **receptions, press conferences and finance meetings, which are**
20 **inappropriate for your infant (20 months) son.^{1/} You state**
21 **that your wife "is an integral part of my campaign team, and**
22 **her presence at these events is vital."^{2/} In addition, you**

23 **1/ The location(s) of the campaign events you describe are**
24 **not fully explained in your request. The Commission assumes,**
25 **however, for purposes of this opinion, that some of the**
26 **campaign events described will be held in your home district**
27 **and others may be held elsewhere, including the Washington DC**
28 **area.**

29 **2/ You have not presented the question of compensation to**
30 **your wife for any campaign services she provides to the**
31 **Committee. Therefore, the Commission does not address the**
32 **application of its regulations at 11 CFR 113.1(g)(1)(i)(H).**
33 **In considering payment from campaign funds to members of a**
34 **candidate's family for bona fide campaign services, the**
35 **Commission noted "that family members should be treated the**
36 **same as other members of the campaign staff. So long as the**
37 **family member is providing bona fide services to the**

3 note that "you have a large district that stretches across
4 north Louisiana." You are required to travel extensively
5 within the district at various times, often including an
6 overnight stay. For all these reasons, you assert that
7 occasional child care for your son is necessary. You state
8 that you believe this expense is directly related to your
9 candidacy, and that it would not exist irrespective of your
10 campaign duties and those of your wife. Therefore, you ask
11 if Commission regulations permit your Committee to use
12 campaign funds to pay for this expense.

13 Under the Act and Commission regulations, a candidate
14 and the candidate's campaign committee have wide discretion
15 in making expenditures to influence the candidate's election,
16 but may not convert excess campaign funds to personal use.
17 2 U.S.C. §§431(9) and 439a; 11 CFR 113.1(g) and 113.2; see
18 also Advisory Opinions 1995-26, 1995-23 and 1995-20.

19 The Commission's regulations provide guidance regarding
20 what would be considered personal use of campaign funds.
21 Personal use is defined as "any use of funds in a campaign
22 account of a present or former candidate to fulfill a
23 commitment, obligation or expense of any person that would
24 exist irrespective of the candidate's campaign or duties as a
25 Federal officeholder." 11 CFR 113.1(g).

26 (Footnote 2 continued from previous page)
27 campaign, salary payments to that family member should not be
28 considered personal use." Federal Register, February 9, 1995
29 (60 Fed. Reg. 7862, 7866). The regulations, however, provide
30 that "any salary payment in excess of the fair market value
of the services provided is personal use." See 11 CFR
113.1(g)(1)(i)(H).

Child care expenses are not listed among those expenditures that would be considered per se personal use.^{3/} The regulations state that the Commission will determine on a case by case basis whether other uses (not listed as per se personal use) of funds in a campaign account 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).

You state that your wife is "an integral part of [your] campaign team" and attends campaign-related events because her participation "is vital." Some of these events apparently require her to travel to your Congressional district in order to participate. Using the standard established by section 113.1(g)(1)(ii), her travel expenses to attend your campaign-related events are attributable to her participation in your campaign for re-election. Therefore, campaign funds could be used to pay for your wife's travel in those cases.^{4/}

^{3/} Under section 113.1(g)(1)(i), personal use includes but is 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; dues, fees or gratuities to nonpolitical organizations unless related to a specific fundraising event; and salary payments to family members unless paid for bona fide, campaign-related services.

^{4/} Because your request describes only campaign-related events, rather than events directly connected to your bona fide official responsibilities as a Federal officeholder, the travel expenses related to your wife's participation would not be permitted under the regulations at 11 CFR 113.2(a)(1).

The situation regarding the care of your child when both you and your wife are engaged in campaign activities is different. The Commission notes that the need to provide care and attention for your infant son would exist irrespective of your campaign responsibilities. Providing for child care when a parent is unavailable for business travel reasons is a concern for most families, regardless of profession. The expenses for such care cannot be said to be specially related to your campaign. Therefore, the Commission concludes that the use of campaign funds to pay for the care of your infant son 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.

Your request notes the Commission's conclusion in Advisory Opinion 1995-20. In that opinion, a candidate (who was also member of Congress) proposed to use campaign funds to pay for the travel expenses of his infant son who traveled with the candidate (and spouse) on campaign trips because he was too young to be apart from them. The Commission concluded that paying such travel expenses would not constitute unlawful personal use of campaign funds. The opinion noted, however, the specific circumstances of the situation, explaining and emphasizing that "the expenditure is (1) only required because of the campaign, and (2) [is for] campaign-related travel ... to the district in order for [the candidate] and [the candidate's] wife to participate in campaign events." Advisory Opinion 1995-20. This opinion is

3 inapplicable to your situation since your request does not
4 concern travel expenses for a child who could not be left
5 apart from his parents but, rather, concerns expenses for
6 child care services.

7 The Commission expresses no opinion regarding the
8 application of any rules of the U.S. House of Representatives
9 or any tax ramifications of the proposed activity, because
10 these issues are not within its jurisdiction.

11 This response constitutes an advisory opinion concerning
12 application of the Act, or regulations prescribed by the
13 Commission, to the specific transaction or activity set forth
14 in your request. See 2 U.S.C. §437f.

15 Sincerely,

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18
19 Danny L. McDonald

20 Chairman

21 Enclosures (AOs 1995-26, 1995-23, and 1995-20)
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