



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 11, 1996

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-42

The Honorable Jim McCrery
McCrery for Congress
P.O. Box 4650
Shreveport, LA 71134-0650

Dear Mr. McCrery:

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

You are currently serving as a member of the U.S. House of Representatives representing the 5th Congressional District of Louisiana and are campaigning for re-election. Your principal campaign committee is McCrery for Congress ("the Committee"). You explain that your wife often accompanies you to campaign-related events such as receptions, press conferences and finance meetings, which are inappropriate for your infant (20 months) son.¹ You state that your wife "is an integral part of my campaign team, and her presence at these events is vital."² In addition, you note that "you have a large district that stretches across north Louisiana." You are required to travel extensively within the district at various times, often including an overnight stay. For all these reasons, you assert that occasional child care for your son is necessary. You state that you believe this expense is directly related to your candidacy, and that it would not exist irrespective of your campaign duties and those of your wife. Therefore, you ask if Commission regulations permit your Committee to use campaign funds to pay for this expense.

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 1995-26, 1995-23 and 1995-20.

The Commission's regulations provide guidance regarding what would be considered personal use of campaign funds. 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).

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

The Commission concludes that you also may use campaign funds to pay for child care expenses in the limited circumstances you present. This is because you and your wife both occasionally need to attend the campaign events involved and because the child care expenses will be incurred only as a direct result of campaign activity and would not otherwise exist. See 11 CFR 113.1(g)(1)(ii)(A); see also Advisory Opinion 1995-20.

The Commission expresses no opinion regarding the application of any rules of the U.S. House of Representatives or any tax ramifications of the proposed activity, 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)

Lee Ann Elliott
Chairman

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

1 The location(s) of the campaign events you describe are not fully explained in your request. The Commission assumes, however, for purposes of this opinion, that some of the campaign

events described will be held in your home district and others may be held elsewhere, including the Washington DC area.

2 You have not presented the question of compensation to your wife for any campaign services she provides to the Committee. Therefore, the Commission does not address the application of its regulations at 11 CFR 113.1(g)(1)(i)(H). In considering payment from campaign funds to members of a candidate's family for bona fide campaign services, the Commission noted "that family members should be treated the same as other members of the campaign staff. So long as the family member is providing bona fide services to the campaign, salary payments to that family member should not be considered personal use." Federal Register, February 9, 1995 (60 Fed. Reg. 7862, 7866). The regulations, however, provide 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).

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).