



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

March 29, 1996

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-47

The Honorable Robert A. Underwood  
United States House of Representatives  
424 Cannon House Office Building  
Washington, D.C. 20515-5301

Dear Mr. Underwood:

This responds to your letters dated November 7 and December 14, 1995, as supplemented by your letter dated March 12, 1996, 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 travel expenses in connection with the 1996 Democratic National Convention.

You state that you will be "a designated super delegate" to the Democratic National Convention which will be held in Chicago on August 26-29, 1996. You plan to attend the convention in this capacity, and your wife will travel with you. You state that the travel to and from the convention will not be part of a "mixed trip" elsewhere or for other purposes that might require some sort of allocation of travel expenses. You plan to travel to the convention directly from Washington, D.C. and to return to Washington, D.C. immediately after the convention.

You propose to use your campaign funds, that is, funds of the Committee for Guam's Voice in Congress: Robert Underwood ("the Committee"), for all of your travel expenses, and those of your wife, in order to attend the convention. You explain: "My attendance as a super delegate at the convention is required in connection with my ancillary duties as Member of Congress." In addition, you state: "My wife will be accompanying me to campaign at the convention."

You explain that, under Democratic Party rules, Members of Congress qualify as unpledged delegates, commonly known as "super delegates." The term "super delegate" includes

elected officials who, by virtue of their capacity as elected officials, are entitled to the status of unpledged delegate. Specifically, the Delegate Selection Rules for the convention provide that all Democratic Members of the House of Representatives shall be confirmed as unpledged delegates from their respective states and shall be recognized as part of their state's delegation. 1996 Delegate Selection Rules, Section 8.A(3).<sup>1</sup> Super delegates participate in the same ways as other delegates, voting on the nominations for President and Vice President, on the party platform, and on other matters which come before the convention.

You state that, as an elected official with unpledged delegate status, you will participate "in a manner which includes both campaign-related and official functions." You explain: "As a Member of Congress, I represent my party and constituency on public policy and legislative matters, and will bring that responsibility and perspective to bear on platform deliberations." You also assert that the convention "presents significant political opportunities and demands related to my candidacy for re-election." Further, you note that constituents expect a candidate to attend the party's most significant event and that the convention provides media, fundraising, and other contacts helpful to your candidacy.

You state that your wife will accompany you to the events scheduled throughout the convention week and will participate in them with you. These include functions related to your pending re-election campaign. When you cannot attend a meeting or function due to a scheduling conflict, your wife will attend in your place. You represent that your wife will "generally assist" you in your convention-related activities, including those helpful to your candidacy.

Although your schedule for the convention is not yet firmly set, there are categories of meetings and functions that you and your wife are preparing to attend "to accomplish these campaign related goals." These categories are as follows:

- (1) Delegation meetings, which involve maintaining contacts with Guam delegates who are also prominent in the politics of Guam and who, in some cases, will assist directly with your campaign.
- (2) Receptions to which you are invited, where you will be in contact with individuals actively interested in Democratic congressional politics. You will be able to approach these individuals for contributions, fundraising assistance, and other support for the campaign.
- (3) Media events, including occasions for press interviews during which you can communicate partisan messages helpful to your campaign.
- (4) Private meetings with Democratic Party activists who may be approached for political and fundraising support for your campaign.

Under the Act and Commission regulations, a candidate and the candidate's committee have wide discretion in making expenditures to influence the candidate's election, but may not convert campaign funds to the personal use of the candidate or any other person. 2 U.S.C. 431(9) and 439a; 11 CFR 113.1(g) and 113.2(d); see also Advisory Opinions 1995-46, 1995-42, and 1995-26. Commission 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).

Commission regulations list a number of purposes that would constitute personal use. 11 CFR 113.1(g)(1)(i). Where a specific use is not listed as personal use, the Commission makes a determination on a case-by-case basis. 11 CFR 113.1(g)(1)(ii).<sup>2</sup> Travel expenses, including subsistence expenses incurred during travel, are among those expenses to be analyzed on a case-by-case basis. If such travel involves both personal activities and campaign or officeholder related activities, the incremental expenses that result from personal activities are personal use unless the person benefiting reimburses the campaign within thirty days for the amount of those expenses. 11 CFR 113.1(g)(1)(ii)(C).<sup>3</sup>

Your description of your activities at the convention indicates that, throughout the convention, you and your wife will engage in activities that are in furtherance of your campaign for re-election. At events and other meetings, you will attempt to maintain contacts and goodwill with persons who will support your campaign through fundraising assistance and contributions. In addition, you will attempt to communicate with constituents with respect to your campaign. You consider your wife's attendance at these events and meetings, alongside of you or in your place, to be important, and you state that it will enhance your re-election effort. The Commission concludes, therefore, that the travel expenses for you and your wife in connection with the convention are directly related to your campaign, and Committee funds may be used for them. In making this conclusion, the Commission is mindful of the inherently political nature of the national nominating convention of a political party. Its conclusion as to your general description of the four types of activities in which you and your wife will engage is made in the context of that event.<sup>4</sup>

The travel expenses of you and your wife should be reported as an operating expenditure by the Committee, with the purpose noted. 11 CFR 104.3(b)(2)(i) and (b)(4)(i).

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 those issues are not within its jurisdiction.

This response constitutes an advisory opinion concerning the 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 1995-46, 1995-42, 1995-26, and 1980-29)

1 According to Appendix B to the "Call for the 1996 Democratic National Convention," Guam is allocated three unpledged delegate votes, including one to be exercised by the Democratic Member of Congress.

2 In explaining the application of the case-by-case approach, the Commission

reaffirm[ed] its long-standing opinion that candidates have wide discretion over the use of campaign funds. If the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.

Explanation and Justification, Commission Regulations on Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (February 9, 1995).

3 In Advisory Opinion 1980-29, the Commission concluded that the costs that a Congressman would incur by his participation as a delegate to the 1980 Republican National Convention could be defrayed from his campaign funds. The opinion explained that candidates and their committees had wide discretion as to the spending of campaign funds. Because the opinion was issued before repeal of the exemption (for certain Members) from the prohibition on personal use of campaign funds, the Commission notes that it is no longer applicable. The regulations on personal use promulgated in 1995 provide more specific standards governing the use of campaign funds.

4 With respect to your own travel expenses, the Commission's regulations covering delegate activity indicate that such costs would be for the purpose of influencing a Federal election and, hence, not a personal use. See 11 CFR 110.14(c) and (e).