



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 19, 1996

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996-9

Greg Pallas, Assistant Treasurer
Re-Elect Exon for U.S. Senate Committee
1947 North Calvert Street
Arlington, VA 22201

Dear Mr. Pallas:

This responds to your letters dated February 23 and March 21, 1996, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the transfer of excess campaign funds by the Re-Elect Exon for U.S. Senate Committee ("the Committee") to the Nebraska Democratic Party.

The Committee is the principal campaign committee of Senator J. James Exon of Nebraska. Senator Exon's present term expires on January 3, 1997, and he is not running for re-election. In light of Senator Exon's announced retirement, the Committee plans to make an unlimited transfer of excess campaign funds to the Nebraska Democratic Party ("the Party").¹ The Party would apply these funds to the purchase of the building it currently uses as its headquarters under a lease agreement with a private individual.

Following this purchase, it is anticipated that the Party will continue to maintain its headquarters in that building. Another part of the structure, however, will be used as a library or center to house Senator Exon's Senate papers following his retirement. This building would also include a replica of Senator Exon's office for viewing by the public, some form of interactive media for public view, and a place for Senator Exon and others to work on the library. You anticipate that, before any funds are transferred, the Party will sign a binding agreement with the Committee that would stipulate how the Party would manage a future library for such purposes.²

You describe Senator Exon's role with respect to these plans and his use of the facility. Senator Exon's papers will be catalogued and ready for transfer to the facility before being physically

placed there. Senator Exon presently has sole discretion and authority with respect to the disposition of his papers and, therefore, will make decisions regarding public access to those papers before leaving office. Once he leaves office and the papers are deposited in the proposed facility, the Party would govern access to the library and to the papers. You state that the Senator will have "no direct control regarding the access of others" to the library facility, and the Party will determine the hours of operation and the admission policy for use of the facility.

Because of Senator Exon's intimate knowledge of his papers, he will provide guidance and input regarding the layout, construction, and accuracy of displays, and he will continue to be consulted occasionally on such matters. Once these decisions are made and executed, however, the Party would retain control of the facility with respect to planning, construction, and future use. Moreover, Senator Exon anticipates having no role or power with respect to the employment or supervision of those personnel (including paid staff of the Party) who will have authority to administer and direct the library facility.

Your proposal includes the provision of an office within the facility to be used by Senator Exon on an occasional basis, principally with regard to the work of the library. You state that this would be "an office which is available and open to the public, but where he could also work from time to time and greet visitors, etc."

You state that neither the Party nor any person acting on behalf of the Party would pay the salary or other compensation of individuals who use the library area or other space in the Party headquarters to perform research, writing, or editorial services for Senator Exon.

In view of the proposed arrangements, you ask whether the Committee's funds may be transferred to the Party for the purchase of the building without being considered a personal use by Senator Exon of his campaign funds.

The Act and Commission regulations provide that excess campaign funds may be used for any lawful purpose, including, specifically, transfers without limitation to any national, State, or local committee of any political party, but may not be converted to the personal use of the candidate or any other person.³ 2 U.S.C. 439a; 11 CFR 113.2(c) and (d). 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). See Advisory Opinions 1995-47, 1995-46, and 1995-42. 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 may make a determination on a case-by-case basis. 11 CFR 113.1(g)(1)(ii).⁴

Although transfers of funds from a candidate's authorized political committee may be made without limit to a State party committee, your proposal may also implicate personal use of those funds by Senator Exon. The Commission has previously considered the question of whether a candidate's campaign committee may donate campaign funds to an entity where the possibility arises that some of those funds may be used to benefit the candidate. Advisory Opinion 1983-27 addressed the donation of campaign funds, remaining after an unsuccessful candidacy, to an

educational foundation. The candidate would serve as Chairman of the foundation's Board of Directors. The Commission concluded that, so long as none of the funds donated by the campaign committee would be paid to the candidate for his personal use, the donation would be permissible. The Commission elaborated by stating that the candidate would not be permitted to receive any funds from the foundation, "including, but not limited to, any compensation, loans, awards, grants, or fellowships," until such time as the foundation expended, "for purposes unrelated to [his] personal benefit, the entire amount so donated." If any of the donated funds accrued to his benefit, a prohibited personal use would result. An exception was provided with respect to the foundation's reimbursement of ordinary and necessary expenses incurred by the candidate on behalf of the foundation in his capacity as Board Chairman. Advisory Opinion 1983-27.

The Commission has also addressed a situation in which a retiring Member of Congress designated campaign funds to be donated to a charitable foundation bearing his name. He planned to designate himself as the initial trustee of the foundation and in that position would distribute foundation funds to organizations that would qualify under the trust documents. As trustee, he would have absolute discretion in the selection of a recipient organization, to decide not to make a contribution, and to choose a successor. In addition to his power as the initial trustee, he reserved the right to amend and revoke the trust, and the trust property would be used for his benefit if he became disabled. The Commission characterized the proposed use of the donation as personal use. Advisory Opinion 1993-22.

You state that the office in the library would be available to Senator Exon, principally for his work on the library (including the greeting of visitors). The Commission concludes that Senator Exon's use of the office for matters connected to the operation of the library facility or to other Party business does not constitute a personal use under 2 U.S.C. 439a. Therefore, there are no limitations on the amount of time which Senator Exon may spend in the office for those purposes. Use of the office for personal activities, however, will be personal use, unless they are of a *de minimis* amount. Cf. 11 CFR 113.1(g)(1)(ii)(D).

The Commission expresses no opinion regarding the application of any rules of the U.S. Senate 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 1995-47, 1995-46, 1995-42, 1993-22, and 1983- 27)

1 According to its 1995 year end report, which covers activity from July 1 to December 31, 1995, the Committee has cash on hand totaling \$201,962. No debts are owed to or by the Committee.

2 You state that the Committee and the Party have not produced a draft agreement. An agreement will be drafted and signed after the Commission issues an opinion on this proposal.

3 Commission regulations define the phrase "excess campaign funds" to mean "amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures. 11 CFR 113.1(e).

4 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).