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FEDERAL ELECTION COMMISSION
Washington, DC 20463

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May 24, 1996

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: Final Draft Advisory Opinion 1996-14

Attached is the final draft of the subject opinion for circulation and tally vote with a 72 hour deadline.

The changes in this draft are made pursuant to the Commission's discussion and motion on May 23, 1996, with respect to Agenda Document #96-58, which directed this office to prepare a revised final draft for tally vote circulation.

The only revisions made are on pages 3 and 4, and they are signaled with **bold** textual and footnote references.

Attachment



DRAFT

1 **ADVISORY OPINION 1996-14**

2
3 **The Honorable E (Kika) de la Garza**
4 **U.S. House of Representatives**
5 **Washington D.C. 20515-4315**

6
7 **Dear Mr. de la Garza:**

8
9 **This refers to your letter dated April 16, 1995, concerning the application of the**
10 **Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission**
11 **regulations to the use of campaign funds to move your office furnishings and household**
12 **effects back to your home State.**

13 **You are currently serving as a member of the U.S. House of Representatives**
14 **representing the 15th Congressional District of Texas. Your principal campaign committee**
15 **is Kika de la Garza for Congress ("the Committee"). You state that you are planning to**
16 **leave office and retire to your home in Texas at the conclusion of this Congressional**
17 **session. You wish to use campaign funds for the shipping costs of sending items from**
18 **your Washington office to Texas. Specifically, you describe these items as "many framed**
19 **pictures, art works, and memorabilia which have accumulated over the past thirty years in**
20 **Congress." You also have "a number of mounted animal heads, bovine skulls, and stuffed**
21 **fowls, many of which have been in my Washington office since I first came to Congress."**
22 **Furthermore, you wish to use campaign funds for the costs of moving your personal**
23 **household furnishings and items from your home in McLean, Virginia, to your home in**
24 **Texas.**

25 **The Act and Commission regulations provide that excess campaign funds may be**
26 **used for any lawful purpose, but may not be converted to the personal use of the candidate**

1 or any other person.¹ 2 U.S.C. §439a; 11 CFR 113.2(c) and (d). Commission regulations
2 provide guidance regarding what would be considered personal use of campaign funds.
3 Personal use is defined as “any use of funds in a campaign account of a present or former
4 candidate to fulfill a commitment, obligation or expense of any person that would exist
5 irrespective of the candidate’s campaign or duties as a Federal officeholder.” 11 CFR
6 113.1(g). See Advisory Opinions 1996-9, 1995-47, 1995-46, and 1995-42. Under 11 CFR
7 113.2(a)(2), excess campaign funds may be used to pay any ordinary and necessary
8 expenses incurred in connection with one’s duties as a holder of Federal office. Such
9 expenses include the costs of winding down the office of a former Federal officeholder for
10 a period of six months after he or she leaves office. Commission regulations also list a
11 number of purposes that would constitute *per se* personal use.² 11 CFR 113.1(g)(1)(i).
12 Where a specific use of campaign funds is not listed as personal use, the Commission will
13 make a determination on a case-by-case basis using the general definition of personal use.
14 11 CFR 113.1(g)(1)(ii).³

¹ 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).

² Under section 113.1(g)(1)(i), personal use includes, but is not limited to, funds used for the following purposes: 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.

³ 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).

1 The use of your Congressional office and its furnishings has been an integral part of
2 performing your duties as a holder of Federal office. In late December 1996, or early
3 January 1997, your official duties will end, and you will be required to vacate your office
4 space. These described furnishings will have to be removed. Accordingly, the transfer of
5 these items from your Washington Congressional office to your home in Texas would be
6 part of the winding down costs described in section 113.2(a)(2). Campaign funds held by
7 the Committee may be used to pay these expenses.

8 The situation is different regarding the transportation of your personal household
9 effects and home furnishings from the Washington area to Texas. These are not part of
10 your Congressional office. Therefore, the expenses to transport your household effects and
11 furnishings to Texas are not included within the winding down costs allowed by 11 CFR
12 113.2(a)(2).

13 The Commission notes, however, that your move to the Washington area from
14 Texas, and the related expenses, were ordinary and necessary to your assumption of
15 office.⁴ The Commission also notes that your proposed use of campaign funds is
16 limited to returning back to Texas. In these specific circumstances, the Commission
17 concludes that the use you intend would be part of the ordinary and necessary
18 expenses incurred in connection with ending your duties as a holder of Federal

⁴ In Advisory Opinion 1980-138 (cited with approval in the above Explanation and Justification), the Commission concluded that the expenses of moving a U.S. Senator-elect and his family to Washington from Alaska were the direct result of his election to Federal office and were incidental to his status as a Federal office holder. The opinion concluded that excess campaign funds could be used for this purpose. See Advisory Opinion 1980-138 and Explanation and Justification, Commission Regulations on Personal Use of Campaign Funds, 60 *Fed. Reg.* 7862, 7863 (February 9, 1995).

1 office.⁵ Therefore, this specific use would be permitted under 11 CFR 113.2(a).
2 Accordingly, you may also use your campaign funds to pay the costs of transporting
3 your personal household effects and furnishings from your home in Virginia to your
4 home in Texas because such a use would be not be a prohibited conversion of
5 campaign funds to personal use.

6 All expenses consistent with this opinion should be reported as other
7 disbursements by your Committee, with the specific payee(s) and purpose noted. See
8 11 CFR 104.3(b)(2) and (b)(4)(vi); see also Advisory Opinion 1993-6.

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

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

15
16 Sincerely,

17
18
19 Lee Ann Elliott
20 Chairman

21
22 Enclosures (AOs 1996-9, 1995-47, 1995-46, 1995-42, 1993-6, 1987-11 and
23 1980-138)
24

⁵ In Advisory Opinion 1987-11, the Commission concluded that the expenses of moving the widow of a deceased Senator (exempt from the prohibition on the personal use of campaign funds) back to her home state were officeholder transition expenses incurred in connection with the cessation of the late Senator's status as a Federal officeholder.