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FEDERAL ELECTION COMMISSION

Washington, DC 20463

AGENDA ITEM
For Meeting of: MAY 23 1996

May 14, 1996

MEMORANDUM

TO: The Commission

THROUGH: John C. Sunna
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael G. Marinelli
Staff Attorney

SUBJECT: Draft AO 1996-14

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 23, 1996.

Attachment

DRAFT

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

Dear Mr. de la Garza:

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

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

The Act and Commission regulations provide that excess campaign funds may be 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
0 a period of six months after he or she leaves office. Commission regulations also list a
1 number of purposes that would constitute *per se* personal use.² 11 CFR 113.1(g)(1)(i).
2 Where a specific use of campaign funds is not listed as personal use, the Commission will
3 make a determination on a case-by-case basis using the general definition of personal use.
4 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.

The use of your Congressional office and its furnishings has been an integral part of performing your duties as a holder of Federal office. In late December 1996, or early January 1997, your official duties will end, and you will be required to vacate your office space. These described furnishings will have to be removed. Accordingly, the transfer of these items from your Washington Congressional office to your home in Texas would be part of the winding down costs described in section 113.2(a)(2). Campaign funds held by the Committee may be used to pay these expenses. These expenses should be reported as other disbursements by your Committee, with the specific payee(s) and purpose noted. See 11 CFR 104.3(b)(2) and (b)(4)(vi); see also Advisory Opinion 1993-6.

The situation is different regarding the transportation of your personal household effects and home furnishings from the Washington area to Texas. These are not part of your Congressional office. Therefore, the expenses to transport your household effects and furnishings to Texas are not included within the winding down costs allowed by 11 CFR 113.2(a)(2).⁴

The further question arises whether use of Committee funds for these transportation expenses is an unlawful personal use. Moving expenses for household effects and furnishings are not listed among those expenditures that would be considered *per se* personal use. Consequently, the Commission will analyze this situation using the general

⁴ In Advisory Opinion 1987-11, the Commission concluded that the expenses of moving the widow of a deceased Senator (exempt from the prohibition 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 Federal officeholder. Because this opinion was issued before repeal of the exemption (for certain Members) from the prohibition on personal use of campaign funds and the approval of the 1995 regulations, the Commission notes that this opinion is no longer applicable. The current regulations on personal use provide more specific standards governing the use of campaign funds. See the discussion below.

1 definition of personal use. While your move to the Washington area and the related
2 expenses were ordinary and necessary to your assumption of office, your relocation from
3 Virginia to Texas is not mandated by your leaving office.⁵ The end of your duties as an
4 officeholder and the related winding down of your office are clearly separate and distinct
5 from any personal decisions you make as to the location of your future residence.
6 Therefore, the Commission concludes that these expenses would exist irrespective of your
7 past campaigns or your duties as a Federal officeholder. Accordingly, you may not use
8 your campaign funds to pay the costs of transporting your personal household effects and
9 furnishings from your home in Virginia to your home in Texas because such a use would
10 be a prohibited conversion of campaign funds to personal use.

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

⁵ 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).

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,

Lee Ann Elliott
Chairman

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