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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA ITEM**  
For Meeting of: JUN 6 1996

May 30, 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

Draft AO 1996-19

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for June 6, 1996.

Attachment

# DRAFT

1 ADVISORY OPINION 1996-19

2  
3 The Honorable James T. Walsh  
4 United States House of Representatives  
5 1330 Longworth House of Representatives  
6 Washington, D.C. 20515-3225  
7

8 Dear Mr. Walsh:

9  
10 This responds to your letters dated April 4, and April 30, 1996, requesting an  
11 advisory opinion concerning application of the Federal Election Campaign Act of 1971,  
12 as amended ("the Act"), and Commission regulations to the use of campaign funds for  
13 travel expenses in connection with the 1996 Republican Convention.

14 You state that you were elected as a delegate, pledged to Senator Dole, to the  
15 1996 Republican National Convention. The Convention will be held in San Diego from  
16 August 12 to August 15, 1996. You plan to attend the convention in this capacity, and  
17 your spouse and two children (ages 12 and 16) will travel with you. You propose to use  
18 your campaign funds, that is, funds of the Walsh for Congress Committee ("the  
19 Committee"), for all of your travel expenses, as well as those of your wife and your two  
20 children, in order to attend the convention.

21 At the convention, you intend to be active as a Dole delegate. You expect that  
22 there will be a variety of receptions during the convention hosted by organizations and  
23 companies, some of which have facilities in your Congressional district. You also  
24 "expect media events from my home district to occur since they will have representatives

1 in attendance." Further, you anticipate meeting with several constituents who are  
2 attending the convention.<sup>1</sup>

3 You affirm that your wife and children are integral parts of your campaign effort.  
4 They have always participated in campaign parties and fund-raisers and have spoken  
5 publicly on your behalf. You characterize them as very sophisticated in the nuances of  
6 politics, and you rely on them heavily. You state that they will be attending with you and  
7 will act on your behalf at receptions, press conferences, fundraising events and meetings  
8 (such as those described above). You explain that they will gather information and make  
9 contacts when two events occur at the same time. Your family will generally support  
10 your activities by co-hosting and possibly sponsoring receptions for New York attendees  
11 to the Convention. In particular, you plan to ask your children to act as your  
12 representatives to the Young Republicans group at their convention function.

13 You also anticipate visiting a friend in Santa Barbara prior to the Convention, if  
14 your schedule allows. If you make the visit, you affirm that you would pay out-of-pocket  
15 expenses for that portion of the trip, i.e., auto rental, hotel and meals, from your personal  
16 funds.

17 Under the Act and Commission regulations, a candidate and the candidate's  
18 committee have wide discretion in making expenditures to influence the candidate's  
19 election, but may not convert campaign funds to the personal use of the candidate or any  
20 other person. 2 U.S.C. §§431(9) and 439a; 11 CFR 113.1(g) and 113.2(d); see also  
21 Advisory Opinions 1996-9, 1995-47, 1995-46, 1995-42, and 1995-26. Commission

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<sup>1</sup> You explain that these are your reasonable expectations. However, the specifics of many of these events and activities will become clearer as the time of the Convention approaches.

1 regulations provide guidance regarding what would be considered personal use of  
2 campaign funds. Personal use is defined as "any use of funds in a campaign account of a  
3 present or former candidate to fulfill a commitment, obligation or expense of any person  
4 that would exist irrespective of the candidate's campaign or duties as a Federal  
5 officeholder." 11 CFR 113.1(g). See Advisory Opinions 1996-9, 1995-47, 1995-46, and  
6 1995-42. Under 11 CFR 113.2(a)(2), excess campaign funds may be used to pay any  
7 ordinary and necessary expenses incurred in connection with one's duties as a holder of  
8 Federal office.

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

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<sup>2</sup> 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 for the personal residence of a candidate; 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.

<sup>3</sup> 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.

1 the campaign within thirty days for the amount of those expenses. 11 CFR  
2 113.1(g)(1)(ii)(C).

3 Your description of your activities at the convention indicates that, throughout the  
4 convention, you and your wife will engage in activities that are in furtherance of your  
5 campaign for re-election. At events and other meetings, you will attempt to maintain  
6 contacts and goodwill with persons who will support your campaign through fundraising  
7 assistance and contributions. In addition, you will attempt to communicate with  
8 constituents with respect to your campaign. You consider your wife's attendance at these  
9 events and meetings, alongside you or in your place, to be important, and you state that it  
10 will enhance your re-election effort. The Commission concludes, therefore, that the  
11 travel expenses for you and your wife in connection with the convention are directly  
12 related to your campaign, and Committee funds may be used for them.<sup>4</sup> See Advisory  
13 Opinion 1995-47.<sup>5</sup>

14 A similar analysis holds for the travel expenses of your two children. You  
15 represent that, like your wife, they will play a significant role in the political receptions  
16 and fundraising events that will be part of the convention, mirroring the role they play in

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<sup>4</sup> The Commission notes that you discuss the possibility of you and your wife attending events that involve meeting with your constituents. Under section 113.2 (a)(1), the costs of travel by a Federal officeholder and an accompanying spouse to participate in a function directly connected to *bona fide* official responsibilities would be considered ordinary and necessary expenses incurred in connection with your duties as a holder of Federal office. The expenses to attend such events, as they apply to both you and your wife, could be paid from campaign funds without constituting personal use of such funds. See 11 CFR 113.2(a)(2).

<sup>5</sup> The circumstances of your request are similar to those in Advisory Opinion 1995-47, where the Commission concluded that the expenses of the wife of a delegate to the 1996 Democratic Convention could be paid with campaign funds. The Commission based its conclusion, in part, on the "inherently political nature of the national nominating convention of a political party," the role of the wife in the delegate's ongoing Congressional re-election campaign, and the benefit of various convention contacts to that campaign.

1 your campaign generally. The Commission notes, in particular, that they may represent  
2 you before certain constituencies such as the Young Republicans. Under these  
3 circumstances, the Commission concludes that campaign funds may also be used to pay  
4 the travel expenses of your two children.<sup>6</sup>

5 You indicate in your request that you may also visit a friend in Santa Barbara  
6 prior to the Convention, if your schedule allows. The regulations note that in "mixed  
7 use" situations, those incremental portions of the travel expenses relating to non-  
8 campaign or officeholder events will be considered personal use, unless the person  
9 benefiting from such use makes reimbursement to the campaign as described in section  
10 113.1(g)(1)(ii). You have indicated your intention to use your personal funds to pay for  
11 such travel and related expenses. The Commission notes that section 113.1(g)(1)(ii)  
12 would also apply to "mixed use" travel expenses involving your spouse and children as  
13 well.

14 Therefore, your travel expenses as well as those of your wife and two sons (as  
15 well as the related meals and lodging expenses) to attend the 1996 Republican  
16 Convention may be paid for with campaign funds from Walsh for Congress Committee.  
17 Payments for these expenses should be reported as operating expenditures by the  
18 Committee, with the purpose noted. 11 CFR 104.3(b)(2)(i) and (b)(4)(i). See Advisory  
19 Opinion 1995-47.

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<sup>6</sup> 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). See Advisory Opinion 1995-47.

