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FEDERAL ELECTION COMMISSION

Washington, DC 20463

AGENDA ITEM
For Meeting of: JUN 13 1996

June 6, 1996

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan M. Levin 92
Senior Attorney

Subject: Draft AO 1996-20

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for June 13, 1996.

Attachment

DRAFT

1 ADVISORY OPINION 1996-20

2
3 The Honorable Frank D. Lucas
4 Lucas for Congress Committee
5 P.O. Box 26825
6 Oklahoma City, OK 73128-0825

7
8 Dear Mr. Lucas:

9
10 This responds to your letter dated May 1, 1996, requesting an advisory opinion
11 concerning the application of the Federal Election Campaign Act of 1971, as amended
12 ("the Act"), and Commission regulations to the use of campaign funds for travel by your
13 Chief of Staff to the 1996 Republican National Convention.

14 You are a member of the House of Representatives from the Sixth District of
15 Oklahoma. You state that, as a delegate from Oklahoma to the 1996 Republican National
16 Convention in San Diego, you will be attending "all activities" during the convention.
17 There are a number of activities in which you will participate along with your
18 congressional Chief of Staff ("COS").

19 You describe certain activities as pertaining to your official duties as a Federal
20 officeholder. You state that your congressional office will continue to operate while you
21 attend the convention. During that week, your COS will act as your liaison to your
22 office. In addition, you state that the policy nature of the convention may require staff
23 assistance, and your COS will attend any policy briefings that occur.

24 You describe other activities as campaign activities. You state that the political
25 nature of conventions provides excellent fundraising opportunities for your campaign.
26 For example, your COS and you plan to contact top Republican contributors who have an
27 interest in the issue areas in which you are most active, and make arrangements to meet
28 them during the convention. You also note that campaign vendors attend the convention
29 and promote services that may be beneficial to your campaign. Your COS and you will
30 meet with vendors who can assist your campaign in expanding its voter lists and data
31 base. You assert that fundraising and the choice of professional campaign services are
32 important to your campaign, and your COS, as your chief political advisor, "represents
33 [you] in all campaign related matters."

1 You also state that you serve as National Co-Chairman of "Rural Americans for
2 Dole." Your COS will need to attend, on your behalf or with you, any activities related
3 to this position. You specifically note that there will be several general election strategy
4 meetings with the Dole campaign that your COS will attend in your place. You assert
5 that the success of the national ticket and your role in that effort have a direct impact on
6 your reelection efforts.

7 You ask whether funds of your principal campaign committee, Lucas for
8 Congress ("the Lucas Committee"), can be used for the cost of your COS's travel to the
9 convention and his subsistence expenses there. You also ask whether the Committee may
10 reimburse him for those expenses or whether the Committee must pay these costs
11 directly.

12 Under the Act and Commission regulations, a candidate and the candidate's
13 committee have wide discretion in making expenditures to influence the candidate's
14 election, but may not convert campaign funds to the personal use of the candidate or any
15 other person. 2 U.S.C. §§431(9) and 439a; 11 CFR 113.1(g) and 113.2(d). See Advisory
16 Opinions 1996-19, 1996-14, 1995-47, and 1995-42. Commission regulations provide
17 guidance regarding what would be considered personal use of campaign funds. Personal
18 use is defined as "any use of funds in a campaign account of a present or former
19 candidate to fulfill a commitment, obligation or expense of any person that would exist
20 irrespective of the candidate's campaign or duties as a Federal officeholder." 11 CFR
21 113.1(g). Additionally, 11 CFR 113.2(a) provides that excess campaign funds may be
22 used to "defray any ordinary and necessary expenses incurred in connection with the
23 recipient's duties as a holder of Federal office..." See also 2 U.S.C. §439a.

24 Commission regulations list a number of purposes that would constitute personal
25 use. 11 CFR 113.1(g)(1)(i). Where a specific use is not listed as personal use, the
26 Commission makes a determination on a case-by-case basis. 11 CFR 113.1(g)(1)(ii).¹

¹ 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 Travel expenses, including subsistence expenses incurred during travel, are among those
2 expenses to be analyzed on a case-by-case basis. If such travel involves both personal
3 activities and campaign or officeholder related activities, the incremental expenses that
4 result from personal activities are personal use unless the person benefiting reimburses
5 the campaign within thirty days for the amount of those expenses. 11 CFR
6 113.1(g)(1)(ii)(C).

7 Your description of the activities of your COS at the convention indicates that he
8 will be performing important functions related to your campaign for reelection. Your
9 COS will be involved in efforts to raise contributions to your campaign from key
10 contributors and will attempt to procure vendor services for important campaign
11 functions. In addition, his performance of liaison activities with your congressional
12 office and his attendance at policy briefings are functions that relate to your duties as a
13 Federal officeholder. Subject to the discussion below, the Commission concludes that the
14 Lucas Committee may pay for the travel and subsistence expenses of your COS with
15 respect to his attendance at the convention.² The Committee may reimburse the COS or
16 may pay for the expenses directly.³

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

² 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.

³ If the COS advances any costs for his travel and subsistence, his outlays and the reimbursements should be reported by the Lucas Committee. To the extent that the travel expenses do not fit within the exemption of 11 CFR 100.7(b)(8), advances by an individual for travel and subsistence would be contributions to the Lucas Committee, unless the individual is reimbursed within a limited period of time. 11 CFR 116.5(b)(1) and (2). Non-exempt transportation and subsistence expenses should be itemized in the appropriate category of receipt if the outstanding amount he advances exceeds \$200 for the calendar year to the Lucas Committee and the reimbursements do not bring him below the \$200 itemization threshold before the end of the reporting period. Unlike other in-kind contributions, corresponding disbursements to the COS by the Committee should not be reported until the reimbursements are made. In any event, the Lucas Committee should treat all non-exempt advances as outstanding debt to the COS until reimbursed. 11 CFR 116.5(c). See 11 CFR 104.11(b). If the total amount disbursed to the COS by the Lucas Committee is \$500 or less, the Committee should report the COS as the payee. If the total amount exceeds \$500 and payments to any one vendor used for the expenses aggregates in excess of \$200, the payments to that vendor should be reported as a memo entry in order to achieve full disclosure but not inflate disbursement figures. See 11 CFR 102.9(b)(2)(i), addressing recordkeeping for travel and subsistence advances.

