



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 14, 1996

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996-20

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

Dear Mr. Lucas:

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

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

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

You describe other activities as campaign activities. You state that the political nature of conventions provides excellent fundraising opportunities for your campaign. For example, your COS and you plan to contact top Republican contributors who have an interest in the issue areas in which you are most active, and make arrangements to meet them during the convention. You also note that campaign vendors attend the convention and promote services that may be beneficial to your campaign. Your COS and you will meet with vendors who can assist your

campaign in expanding its voter lists and data base. You assert that fundraising and the choice of professional campaign services are important to your campaign, and your COS, as your chief political advisor, "represents [you] in all campaign related matters."

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

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

Under the Act and Commission regulations, a candidate and the candidate's committee have wide discretion in making expenditures to influence the candidate's election, but may not convert campaign funds to the personal use of the candidate or any other person. 2 U.S.C. 431(9) and 439a; 11 CFR 113.1(g) and 113.2(d). See Advisory Opinions 1996- 19, 1996-14, 1995-47, and 1995-42. 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). Additionally, 11 CFR 113.2(a) provides that excess campaign funds may be used to "defray any ordinary and necessary expenses incurred in connection with the recipient's duties as a holder of Federal office..." See also 2 U.S.C. 439a.

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

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

You also indicate that your COS and you will perform functions related to the Dole presidential campaign. Although the use of campaign funds for travel to assist another campaign may result in an in-kind contribution, the circumstances surrounding these activities will not implicate a contribution by the Lucas Committee to the Dole campaign. See 11 CFR 9004.7(b)(2), and 9034.7(b)(2). The Commission notes that you will be attending the convention as a delegate, that you are an officeholder, and that, due to the purpose and nature of a national party convention, there will be meetings and activities aimed at supporting the party's presidential nominee. Since it is expected that a person who attends the convention as a delegate and officeholder would participate in such meetings and activities as a natural extension of such status, the activities of you and your COS with respect to your function in the Dole campaign will not result in a contribution by the Lucas Committee to the Dole campaign. In making this conclusion, the Commission assumes that any incremental travel and subsistence, or other expenses connected to the participation by you or your COS in such campaign activities (e.g., as chairman of Rural Americans for Dole), would be paid for by the Dole campaign. Otherwise, a contribution by the Lucas Committee would result, which would be prohibited with respect to a general election presidential campaign that accepts full Federal funding. 26 U.S.C. 9003(b)(2); 11 CFR 9003.2(a)(2).

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 1996-19, 1996-14, 1995-47, and 1995-42)

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.

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.