

HAGEN, DYE, HIRSCHY & DILORENZO, P.C.
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IN REPLY PLEASE REFER
TO FILE NO: 4162.004

May 13, 1996

VIA FEDERAL EXPRESS

Federal Election Commission
999 E Street, Northwest
Washington, D. C. 20463

Re: Request for Expedited Opinion Under
2 USC 437f(a) (2)

Ladies and Gentlemen:

This office represents Congressman Wester S. Cooley and his authorized campaign committee.

The Congressman has recently become embroiled in numerous allegations made by the press relating to the acceptance of veterans benefits, allegations relating to benefits received under a property tax/farm tax deferral program and numerous other allegations. The Congressman's campaign committee maintains campaign funds. The Congressman and his committee wish to utilize campaign funds to defray the Congressman's expenses incurred with our law firm and other professionals. Congressman Cooley and his committee consider these expenses to be campaign related because they address a variety of allegations which the media and others have made campaign issues. Because he must respond within the context of his campaign, the Congressman views the expenditures as necessary to his campaign for re-election.

We note that 11 CFR § 113.1(g) (5) provides that the use of campaign funds for an expense that would be a political expense under the rules of the United States House of Representatives or an officially connected expense under the rules of the United States Senate is not personal use to the extent that the expense is an

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Federal Election Commission
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expenditure under 11 CFR 100.8 or an ordinary and necessary expense incurred in connection with the duties of a holder of federal office.

However, 11 CFR § 114.1(g)(6) provides that payments which must be made irrespective of a candidacy may constitute "personal use."

The final rule contained in 11 CFR § 113.1(g)(1)(ii) provides that the commission will determine, on a case-by-case basis, whether other uses of funds in a campaign account fulfill a commitment, obligation or expense that would exist irrespective of the candidate's campaign or duties as a federal office holder, and therefore are personal use. Because services rendered by my law firm and by other professionals may potentially constitute "personal use" or may constitute campaign expenditures under 11 CFR 100.8 or ordinary and necessary expenses incurred in connection with the duties of a holder of a federal office, the Congressman and his authorized committee request the opinion of the commission concerning the propriety of using campaign funds for the purpose of defraying these expenses.

In particular, our office has provided the following categories of services to our clients:

1. Preparation of affidavits relating to information for release to the press;
2. Communication with the press and, in particular, fielding press inquiries concerning allegations involving the Congressman;
3. Research on Oregon law relating to defamation and retractions for false statements made in the press;
4. Drafting and revision of press releases;
5. Demands for retraction for false statements made in various newspaper articles relating to the Congressman;
6. Research regarding establishment of a legal defense trust fund and the applicability of the Federal Election Campaign Act and regulations promulgated by the Federal Election Commission thereto;

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- 7. Drafting of legal defense trust fund agreement;**
- 8. Representation of the Congressman in a legal proceeding in which a newspaper is attempting to obtain confidential information;**
- 9. Research regarding county building permit requirements to respond to newspaper allegations of wrongdoing relating to the Congressman;**
- 10. Research regarding laws and Veterans Administration regulations regarding the receipt of Veterans Administration benefits to respond to newspaper allegations of wrongdoing relating to the Congressman and his spouse;**
- 11. Review of daily news clippings;**
- 12. Political advice given to the Congressman;**
- 13. Research regarding the disclosability of certain information under the Freedom of Information Act;**
- 14. Research regarding Oregon law relating to other newspaper allegations concerning the Congressman;**
- 15. Communication with the Veterans Administration directly related to an inquiry requested by the Congressman into newspaper allegations concerning the Congressman and his spouse;**
- 16. Conversations with various office holders and political activists regarding campaign strategy and responding to allegations made by the media;**
- 17. Factual investigations relating to newspaper allegations of wrongdoing by the Congressman;**
- 18. Communications with the House Committee on Standards of Official Conduct and with the Federal Election Commission all regarding the establishment of a legal defense fund and the use of campaign funds for legal and other expenses;**

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19. Research regarding the use of campaign funds for legal expenses;
20. Research regarding the Oregon tax deferral for farm land in response to wrongful newspaper allegations relating to the Congressman;
21. Discussions with county tax officials to respond to and demand a retraction from the newspapers which alleged wrongdoing by the Congressman culminating in a retraction by the Bend Bulletin newspaper;
22. Conferences with the Congressman and his spouse regarding the above matters.

We believe that none of these matters would have arisen but for the Congressman's campaign for re-election. As stated earlier, the Congressman views the expenditures as essential to his re-election effort.

We would appreciate your indicating whether expenses incurred by the Congressman relating to each of the above-referenced categories may be defrayed by use of the campaign committee's campaign funds. In making this request, we are mindful of the statement made on numerous occasions by the Commission that neither the Federal Election Campaign Act nor the Commission are designed to interfere with the wide discretion given candidates relating to the use of campaign funds.

The primary election for the Second Congressional District in Oregon will be held on Tuesday, May 21, 1996. 2 USC § 437f(a)(2) provides that: "If an advisory opinion is requested by a candidate, or any authorized committee of such candidate, during the 60-day period before any election for federal office involving the requesting party, the commission shall render a written advisory opinion relating to such request no later than 20 days after the commission receives a complete written request."

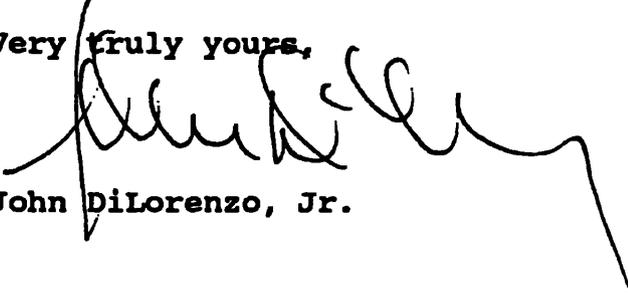
On behalf of Congressman Cooley and his authorized committee, we are therefore requesting your advisory opinion within 20 days of the date of this letter.

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Please call should you have any questions.

Very truly yours,


John DiLorenzo, Jr.

cc - Congressman Wes Cooley

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 22, 1996

**John DiLorenzo, Jr.
Hagen, Dye, Hirschy & DiLorenzo, P.C.
Attorneys at Law
19th Floor Benj. Franklin Plaza
One SW Columbia Street
Portland, OR 97258-2087**

Dear Mr. DiLorenzo:

This responds to your letter dated May 13, 1996 in which you request an advisory opinion on behalf of Representative Wester S. Cooley concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use of campaign funds to pay certain legal expenses.

You indicate that Mr. Cooley has recently been the subject of press allegations relating to the acceptance of veteran's benefits, the receipt of benefits under a tax deferral program, and other matters. You state that your law firm has provided services to Mr. Cooley in connection with these allegations. These services are briefly described in your letter. You ask whether Mr. Cooley would be permitted to use campaign funds to pay for these services.

As you may know, the Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). The request is made public, and the Commission's opinion is also a public document. 11 CFR 112.2(a), 112.4(g). The request must concern a specific transaction or activity that "the requesting person plans to undertake or is presently undertaking and intends to undertake in the future." 11 CFR 112.1(b). The regulations also explain that an advisory opinion request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c). The regulations further provide that this office shall determine if a request is incomplete or otherwise not qualified as an advisory opinion request. 11 CFR 112.1(d).

In view of the foregoing requirements, you will need to provide additional factual information in order to proceed with requesting an advisory opinion regarding some of the activities described in your letter. The additional information you will need to provide is described below.

Your letter lists 22 kinds of services you have provided. Numbers 1, 2, 4 and 11 are services related to monitoring and communicating with the press. Please describe the subject matter of the affidavits you prepared for release to the press, and the various press communications you conducted on behalf of Mr. Cooley.

Numbers 3 and 5 are research and representation services related to Oregon defamation law and false statements made in the press. Describe the nature of the alleged defamatory statements made about Mr. Cooley. Also, specify when they were made and whether they were directed at Mr. Cooley in his capacity as a candidate or Member of Congress, or whether they were directed at him in his individual capacity.

Number 8 is representation provided to Mr. Cooley in a proceeding in which a newspaper is trying to obtain confidential information. Number 13 involves research regarding the disclosure of information under the Freedom of Information Act. Please indicate whether these two matters are related to each other. With regard to number 8, describe the context in which the newspaper is attempting to obtain the confidential information, and explain what you anticipate the newspaper may intend to do with such information. With regard to number 13, indicate which government agency is in possession of the information, and whether the agency has actually received a Freedom of Information Act request for it. If the agency has received a request, provide any information you have on who the requesting party is and explain what you anticipate they may intend to do with the information.

Numbers 9, 10, and 20 are research services on county building permit requirements, Veterans Administration regulations and benefits, and Oregon farm land tax deferrals. Numbers 15 and 21 involve communications with the Veterans Administration and county tax officials regarding these matters. In each case, you indicate that these services were part of an effort to respond to newspaper allegations of wrongdoing related to Mr. Cooley. Provide more specific information on the subject matter of the research and communications services you provided. In addition, describe any disputes or legal proceedings regarding county building permit requirements, Veterans Administration regulations or benefits, or Oregon farm land tax deferrals that Mr. Cooley is currently involved in or has been involved in at any time in the past. Also, indicate the status of each such dispute or proceeding at the time the newspaper allegations were made. If any of these disputes or proceedings were ongoing at the time the newspaper allegations were made, indicate whether any of the research or communications services you provided were part of an effort to resolve these disputes or conclude these proceedings.

Numbers 14 and 17 are research and investigative services relating to other newspaper allegations about Mr. Cooley. Please describe the newspaper allegations and the subject matter of your research and investigations. If Mr. Cooley is or has been involved in any disputes or legal proceedings in these areas, provide the information described in the preceding paragraph about those disputes and proceedings.

In numbers 10, 15, and 21, you list services related to newspaper allegations of wrongdoing by Mr. Cooley's spouse and conferences with both Mr. Cooley and his spouse regarding the various matters described in your letter. In your response, indicate whether Mr. Cooley's spouse is a client of your firm, and whether any of the services listed in your letter were part of an effort to advise her on her potential liability for accepting Veterans benefits to which she allegedly was not entitled.

Upon receiving your responses to the foregoing questions, this office and the Commission will give further consideration to your inquiry as an advisory opinion request. This letter is being sent by fax, given the stated exigency of your inquiry, with a first class mailing to follow. You may reply by fax if desired, but your signed original letter is also needed for record purposes. The fax number for this office is (202) 219-3923.

If you have any questions concerning the advisory opinion process or this letter, please contact Mr. Litchfield. His number is (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: 

N. Bradley Litchfield
Associate General Counsel

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*Also admitted in Washington
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†LLM in taxation

IN REPLY PLEASE REFER
TO FILE NO. 4162808

May 22, 1996

VIA FACSIMILE

N. Bradley Litchfield, Esq.
Associate General Counsel
Federal Election Commission
999 E Street, N. W.
Washington, D. C. 20463

AOR 1996-24

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COUNSEL

Dear Mr. Litchfield:

Thank you for your facsimile of May 22, 1996, in which you request additional factual information pursuant to 11 CFR 112.1. Although 11 CFR 112.1(c) requires an advisory opinion request to include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made, the regulation presents special challenges when considering the provision of legal services because our attorney-client privilege does not permit us to reveal client confidences. We will, therefore, attempt to respond to your questions within those parameters. Your questions and our responses are as follows:

1. **QUESTION:** Numbers 1, 2, 4 and 11 are services related to monitoring and communicating with the press. Please describe the subject matter of the affidavits you prepared for release to the press, and the various press communications you conducted on behalf of Mr. Cooley.

RESPONSE: The subject matter of the affidavits prepared for release to the press related to the Cooleys' marriage. In the affidavits, Congressman Cooley and Rosemary Cooley attested that they had been married prior to 1994. The affidavits were presented to rebut suggestions made by various reporters that certain statements contained within Congressman Cooley's voter's pamphlet statement were not accurate. Allegations relating to the accuracy

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of Congressman Cooley's voter's pamphlet statements were raised as campaign issues during his last campaign and are campaign issues during the course of this campaign. The affidavits thoroughly rebutted those suggestions. During the course of our representation, we have fielded numerous inquiries with the press concerning the Congressman's positions relating to various allegations which have been made regarding his conduct. Those allegations have become campaign issues and have been rebutted or responded to within the context of his campaign for reelection.

2. **QUESTION:** Numbers 3 and 5 are research and representation services related to Oregon defamation law and false statements made in the press. Describe the nature of the alleged defamatory statements made about Mr. Cooley. Also, specify when they were made and whether they were directed at Mr. Cooley in his capacity as a candidate or Member of Congress, or whether they were directed at him in his individual capacity.

RESPONSE: On April 17, 1996, the Bend Bulletin published an article entitled: Cooley Caught in Web of Violations, wherein the author of the article stated that the vitamin repackaging operation at the Congressman's ranch was not an allowed use in the ranch's exclusive farm use zone. The article stated that the two-acre site where the vitamin operation was located was improperly taking advantage of a "big property tax break." The subject of the article became a campaign issue. Our office contacted the office of the county assessor, reviewed the applicable statutes relating to the farm tax deferral program, reviewed the law entitling the owner of farm land to the property tax deferral and requested the opinion of the county assessor concerning whether the property was properly classified. On May 3, 1996, the assessor reviewed all of the applicable tax lots, at our request, and stated in correspondence that he found no reason to disqualify any tax lot or portion of any tax lot from the farm use assessment tax deferral program.

ORS 30.165 provides for demands against publishers for retraction within fifteen days of publication of a defamatory statement. On May 6, 1996, our office complied with the statute and requested the appropriate retraction. On May 7, 1996, the Bend Bulletin published on its front page an article entitled Bulletin Erred on Tax Deferral Issue and stated that the erroneous element of the Bulletin's report was based on a reporter's

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misinterpretation of assessor's office records and that the newspaper regretted the error. The original article was directed to the Congressman's conduct at a time he was running for office. Although the defamatory statements were made against him personally, there is no doubt that the widespread defamatory statement would be a consideration made by voters within the scope of the Congressman's reelection campaign.

In addition, on May 13, 1996, the Congressman demanded the retraction by the Portland Oregonian of certain statements made in an April 27, 1996, article entitled: Friends Say Cooleys' Renewed Vows in '93 in Palm Springs. The article quoted two sources who have since either denied making the comments or have denied being interviewed at all by The Oregonian newspaper. The comments were presented in such a way as to suggest that the Congressman has not been truthful, were disseminated throughout the state, and have become a campaign issue. The demand for retraction has not yet been acted upon by The Oregonian newspaper.

3. **QUESTION:** Number 8 is representation provided to Mr. Cooley in a proceeding in which a newspaper is trying to obtain confidential information. Number 13 involves research regarding the disclosure of information under the Freedom of Information Act. Please indicate whether these two matters are related to each other. With regard to number 8, describe the context in which the newspaper is attempting to obtain the confidential information, and explain what you anticipate the newspaper may intend to do with such information. With regard to number 13, indicate which government agency is in possession of the information, and whether the agency has actually received a Freedom of Information Act request for it. If the agency has received a request, provide any information you have on who the requesting party is and explain what you anticipate they may intend to do with the information.

RESPONSE: Our obligations to our clients do not permit us to describe the tasks listed in number 8 or number 13 with any further specificity.

4. **QUESTION:** Numbers 9, 10 and 20 are research services on county building permit requirements, Veterans Administration regulations and benefits, and Oregon farm land tax deferrals. Numbers 15 and 21 involve communications with the Veterans Administration and county tax officials regarding these matters.

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In each case, you indicate that these services were part of an effort to respond to newspaper allegations of wrongdoing related to Mr. Cooley. Provide more specific information on the subject matter of the research and communications services you provided. In addition, describe any disputes or legal proceedings regarding county building permit requirements, Veterans Administration regulations or benefits, or Oregon farm land tax deferrals that Mr. Cooley is currently involved in or has been involved in at any time in the past. Also, indicate the status of each such dispute or proceeding at the time the newspaper allegations were made. If any of these disputes or proceedings were ongoing at the time the newspaper allegations were made, indicate whether any of the research or communications services you provided were part of an effort to resolve these disputes or conclude these proceedings.

RESPONSE: Allegations printed in newspapers relating to the Congressman's compliance with county building permits, acceptance of Veterans Administration benefits by the Congressman's wife, and the Congressman's benefitting from the Oregon farm land tax deferral program (see response to Number 2 above) have become campaign issues. In each case, our office first explored the applicable law in order to examine whether the allegations were accurate. Upon researching the law and determining that the allegations were inaccurate, our office embarked upon contacting representatives of each agency involved in an effort to obtain from the agency information which could be relied upon by the public in order to assure the public that Congressman Cooley had conducted himself properly. With respect to the farm tax deferral question, our research and contact with the appropriate government official resulted in a retraction from the *Bend Bulletin* newspaper. (See response to question Number 2). The Congressman has called upon the Veterans Administration to conduct an inquiry into the allegations relating to he and his wife and the receipt of Veterans benefits. In the course of requesting the inquiry, the Congressman and his wife have supplied the Veterans Administration with certain information. Communications between this office and the Veterans Administration have been for that purpose. In no case were proceedings or disputes pending at the time the initial newspaper articles were published. In addition, no government entity has commenced any proceeding against the Congressman or his wife relating to any of the allegations published. Rather, the allegations have become campaign issues which will be seized upon by the Congressman's opponent in the general election and must be rebutted.

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5. QUESTION: Numbers 14 and 17 are research and investigative services relating to other newspaper allegations about Mr. Cooley. Please describe the newspaper allegations and the subject matter of your research and investigations. If Mr. Cooley is or has been involved in any disputes or legal proceedings in these areas, provide the information described in the preceding paragraphs about those disputes and proceedings.

RESPONSE: The Oregonian newspaper has made other allegations relating to the Congressman. In particular, The Oregonian has alleged that the Congressman improperly took a tax deduction for a dependent who lived on the Cooley ranch property for several years. That person was an acquaintance of the Congressman's family and had moved from California to live with the Cooleys on their eastern Oregon ranch. The individual helped with chores and was provided room, board, college tuition, and living expenses as a result of the Congressman's kindness. The Oregonian now suggests that the Congressman took unfair advantage of the tax laws with respect to this matter. There is no legal proceeding pending with respect to the deduction. In addition, The Oregonian newspaper has raised questions relating to the Congressman's war record. A complaint has been filed by an individual with the Oregon Secretary of State suggesting that the Congressman's voter's pamphlet statement in 1994 contained inaccuracies relating to his war record. Although the Secretary of State is investigating the complaint, there is no formal proceeding pending against the Congressman at this time. Nevertheless, the issues reported by the newspaper have become significant issues in the course of the campaign. It is necessary that the Congressman have the benefit of research and investigative services to form a firm factual basis in order to structure his response to those claims.

6. QUESTION: In numbers 10, 15 and 21, you list services related to newspaper allegations of wrongdoing by Mr. Cooley's spouse and conferences with both Mr. Cooley and his spouse regarding the various matters described in your letter. In your response, indicate whether Mr. Cooley's spouse is a client of your firm, and whether any of the services listed in your letter were part of an effort to advise her on her potential liability for accepting Veterans benefits to which she allegedly was not entitled.

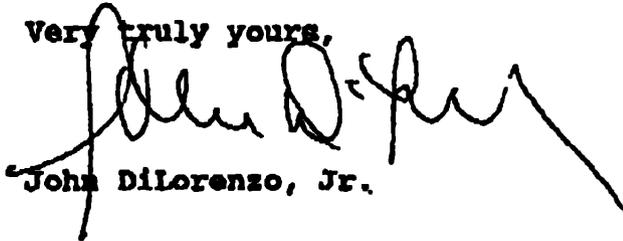
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RESPONSE: This office represents both Congressman Cooley and his spouse. We have therefore shared our findings and conclusions with her. Both the Congressman and Mrs. Cooley vehemently deny that they have violated any Veterans Administration regulations or statutes relating thereto. They further deny that they have received any benefits improperly. In order to counter allegations of wrongdoing which have become campaign issues, it was first necessary to determine whether those allegations had any validity. Therefore, research and communication services were essential to that process.

Please call should you have any questions concerning these responses.

Very truly yours,

A handwritten signature in black ink, appearing to read "John DiLorenzo, Jr.", written over the typed name below.

John DiLorenzo, Jr.

cc - Congressman Wes Cooley