

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

SEP 5 4 26 PM '96



FEDERAL ELECTION COMMISSION

Washington, DC 20463

September 5, 1996

MEMORANDUM

AGENDA ITEM
For Meeting of: SEP 12 1996

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

SUBJECT: Draft AO 1996-34

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for September 12, 1996.

Attachment

1 **ADVISORY OPINION 1996-34**

DRAFT

2
3 **Susan Wenger, Treasurer**
4 **Thornberry for U.S. Congress Committee**
5 **P.O. Box 9392**
6 **Amarillo, TX 79105**

7
8 **Dear Ms. Wenger:**

9
10 **This responds to your letters dated July 30 and June 6, 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 and in connection**
14 **with campaign travel expenses in the 13th Congressional District of Texas.**

15 **Your letters state that Representative William M. Thornberry, a candidate for re-**
16 **election to the Congress, and his spouse expected to travel to the Republican National**
17 **Convention in San Diego, California in August. Mr. Thornberry and his wife planned to**
18 **take their two minor children, ages six and four, with them on the trip. His principal**
19 **campaign committee, the Thornberry for U.S. Congress Committee ("the Committee"),**
20 **wishes to use campaign funds to pay for the travel expenses of Mr. Thornberry's family.**
21 **Mr. Thornberry was not elected as a delegate or alternate delegate to the Convention.**
22 **However, he expected to be involved in events which would include major donors from**
23 **his state, as well as events planned by the National Republican Congressional Committee.**
24 **Through satellite feeds, he also plans to take part in press events which will be carried in**
25 **his district during the Convention. In a September 5, 1996, telephone conversation with**
26 **the Commission's legal staff, you indicated that the foregoing Convention activities did**
27 **take place as described herein. You also explained, however, that Mr. Thornberry paid**

1 for the Convention travel expenses of his two children from his personal funds and does
2 not propose to seek reimbursement from the Committee for those expenses.

3 According to statements made by Mr. Thornberry about this request, his wife is an
4 integral part of the campaign and has participated in most campaign events. She has been
5 the featured speaker at several fundraising events for the Committee. Mr. Thornberry
6 described her as very sophisticated in the nuances of politics and states that she has
7 "worked for Congressmen and Cabinet Members in the past." Mrs. Thornberry would
8 attend all Convention events with Mr. Thornberry or would attend such events, including
9 receptions and fundraising functions, on his behalf when he could not attend.

10 Mr. Thornberry's two children were also expected to attend many campaign
11 events with their parents. Mr. Thornberry states that his family campaigns together, and
12 the family appears in his brochures and television advertising. They are an integral part
13 of his re-election campaign. He intended that his family would take part in at least one of
14 the press events and satellite feeds occurring during the Convention. Furthermore, his
15 family is expected to participate in many of the Convention events mentioned above.

16 The Committee also wishes to use campaign funds to pay for travel expenses for
17 Mrs. Thornberry and the children in connection with campaign activities on November 1
18 through 5. This is to be a final tour of the major cities in the 13th Congressional District
19 immediately before the election. Again, the family members are expected to be part of
20 various campaign events. Included in your request is a preliminary schedule of events on
21 the tour. The activities listed in the schedule include rallies, phone bank activities and
22 various campaign receptions.

1 Under the Act and Commission regulations, a candidate and the candidate's
2 committee have wide discretion in making expenditures to influence the candidate's
3 election, but may not convert campaign funds to the personal use of the candidate or any
4 other person. 2 U.S.C. §§431(9) and 439a; 11 CFR 113.1(g) and 113.2(d); see also
5 Advisory Opinions 1996-20, 1996-19, 1996-9, 1995-47, 1995-46, and 1995-42.
6 Commission regulations provide guidance regarding what would be considered personal
7 use of campaign funds. Personal use is defined as "any use of funds in a campaign
8 account of a present or former candidate to fulfill a commitment, obligation or expense of
9 any person that would exist irrespective of the candidate's campaign or duties as a
10 Federal officeholder." 11 CFR 113.1(g). See Advisory Opinions 1996-19, 1996-9, 1995-
11 47, 1995-46, and 1995-42. Under 11 CFR 113.2(a)(2), excess campaign funds may be
12 used to pay any ordinary and necessary expenses incurred in connection with one's duties
13 as a holder of Federal office.

14 Commission regulations list a number of purposes that would constitute personal
15 use. 11 CFR 113.1(g)(1)(i).¹ Where a specific use is not listed as personal use, the
16 Commission makes a determination on a case-by-case basis. 11 CFR 113.1(g)(1)(ii).²

¹ 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.

² 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).

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 The description of Mr. Thornberry's activities at the Convention indicated that,
8 while he would not serve as a delegate or as an alternate throughout the Convention, he
9 and his family would engage in activities that would promote his campaign for re-election
10 to the Congress. At events and other meetings, Mr. Thornberry would attempt to
11 maintain contacts and goodwill with persons who would support the campaign through
12 fundraising assistance and contributions. In addition, he would attempt to communicate
13 with constituents with respect to the campaign. Mr. Thornberry considered attendance by
14 his wife at these events and meetings, alongside him or in his place, to be important, and
15 he stated that it would be an integral part of his re-election campaign. The Commission
16 concludes, therefore, that the travel expenses for Mr. Thornberry and his spouse in
17 connection with the Convention are directly related to his campaign, and Committee
18 funds may be used for them.³ See Advisory Opinions 1996-19 and 1995-47.⁴

³ 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)(1).

⁴ The circumstances in this request are very similar to the facts in Advisory Opinion 1996-19. In that opinion, the Commission permitted a candidate's campaign committee to pay for the travel expenses of the

1 A similar analysis holds for the travel expenses of Mr. Thornberry's spouse and
2 two children relative to the November trip. The November trip described in the request is
3 clearly related to Mr. Thornberry's campaign. The request represents that his wife, and
4 children will play a significant role in the political receptions and fundraising events that
5 are part of the trip. Under these circumstances, the Commission concludes that campaign
6 funds may be used to pay the travel expenses of Mr. Thornberry's wife and two children
7 and these expenses would not be viewed as personal use.

8 In summary, Mr. Thornberry's travel expenses, and those of his wife (including
9 the related meals and lodging expenses) to attend the 1996 Republican Convention, as
10 well as the travel expenses of the family (Mr. Thornberry, his wife and two children) to
11 make the early November campaign trip, may be paid by the Committee.

12 Payments for these expenses should be reported as operating expenditures by the
13 Committee, with the purpose and other data noted. 11 CFR 104.3(b)(2)(i) and (b)(4)(i).

14 See Advisory Opinions 1996-19 and 1995-47.

15 The Commission expresses no opinion regarding the application of any rules of
16 the U.S. House of Representatives or any tax ramifications of the proposed activity,
17 because those issues are not within its jurisdiction.

candidate's wife and children to attend the 1996 Republican Convention. The Commission, in reaching its conclusion, noted the role of the wife and children in the candidate's ongoing Congressional re-election campaign, and the benefit of various convention contacts to that campaign. The difference in that opinion was that the candidate was a delegate. This distinction, again, is not material, since the conclusion in Advisory Opinion 1996-19 was based not on the official delegate status of the candidate at the convention, but on the activity he and his family would engage in at the convention. See 11 CFR 110.14(c) and (e). See also Advisory Opinions 1996-20 and 1995-47

