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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 19, 1996

MEMORANDUM

**AGENDA ITEM**  
For Meeting of: SEP 26 1996

TO: The Commission

THROUGH: John C. Surina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

SUBJECT: Draft AO 1996-40

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for September 26, 1996.

Attachment

# DRAFT

1 ADVISORY OPINION 1996-40

2  
3 The Honorable Mel Hancock  
4 United States House of Representatives  
5 Washington, D.C. 20515

6  
7 Dear Representative Hancock:  
8

9 This responds to your letters dated September 5 and July 16, 1996, with  
10 enclosures, which request an advisory opinion concerning application of the Federal  
11 Election Campaign Act of 1971, as amended ("the Act"), to a proposed donation by your  
12 campaign committee to the Taxpayers' Survival Association ("TSA"), a nonprofit  
13 corporation formed under Missouri statutes.

14 You indicate that you are not seeking re-election to the House of Representatives  
15 in the 1996 election cycle and will leave the Congress in January 1997. You propose to  
16 contribute the balance of your campaign funds to TSA. These funds are held by the  
17 Hancock for Congress committee which is your principal campaign committee.  
18 You ask whether this would be a permissible use of the committee's remaining campaign  
19 funds.

20 The materials submitted with your request indicate that the Taxpayers' Survival  
21 Association or TSA has been recognized by the Internal Revenue Service as a qualified  
22 educational foundation under 26 U.S.C. §501(c)(3). IRS Publication 78 (1991) includes a  
23 listing for TSA as an entity described in §170(c) of the Internal Revenue Code. Your  
24 request also explains that TSA was formed by you in 1977, and you have continued to  
25 serve at its President and Chairman of the Board.

26 In a letter dated June 25, 1996, to the House Committee on Standards of Official  
27 Conduct, you stated that at "no time has there been any inurement [from TSA] to me.  
28 The by-laws prohibit any director from being paid a salary or director fee." This letter  
29 also notes that reimbursement of incidental expenses for travel and lodging to attend TSA  
30 meetings is allowed under the by-laws. In addition, you point out that your status with  
31 TSA will not change after you leave office. You expect to begin receiving social security  
32 benefits, effective January 1997, and state that this "would preclude me from a salaried

1 position. I will not receive any compensation from the TSA and neither will any family  
2 member or resident of my household." You further explain that TSA may, in the future,  
3 employ an executive director, but that present plans do not contemplate doing so. No  
4 present or former congressional staff or campaign staff are being considered for such a  
5 position.

6 As you know, the Act provides that campaign funds may be donated to any  
7 organization described in 26 U.S.C. §170(c), but may not be "converted by any person to  
8 any personal use." 2 U.S.C. §439a, 11 CFR Part 113. The regulations provide that  
9 donations from campaign funds to §170(c) organizations are not personal use, unless the  
10 candidate (former or current) receives compensation from the donee organization before  
11 that organization has expended, for purposes unrelated to the candidate's personal benefit,  
12 the entire amount donated to it. 11 CFR 113.1(g)(2).

13 Previous advisory opinions issued by the Commission have considered the  
14 application of the Act and Commission regulations to factual situations somewhat similar  
15 to your circumstances. For example, in Advisory Opinion 1993-13, former Senator  
16 Wyche Fowler proposed to donate the remaining funds of his 1992 Senate campaign to a  
17 university that was recognized by the Internal Revenue Service as a qualified 170(c)  
18 entity, and the donated funds were to be designated for a student scholarship program.  
19 The Commission held that the donation was permitted under the Act. Other opinions  
20 have stated the same conclusion. Advisory Opinions 1992-21 and 1985-9. Compare  
21 Advisory Opinion 1993-22 in which the Commission concluded that the donation of  
22 campaign funds to a private charitable foundation established by a retiring Member of  
23 Congress would represent personal use because the donee was not a 170(c) organization  
24 and the Member would retain numerous powers to control distribution of the funds,  
25 including the power to revoke the underlying trust agreement and use the funds for his  
26 personal benefit if he became disabled.

27 The situation you describe is one where the proposed donation of your campaign  
28 funds would be made to a qualified 170(c) organization that will not employ or otherwise  
29 compensate you or any member of your family, or any member of your official or  
30 campaign staffs. Furthermore, there is no indication that you have any direct or indirect

1 power or legal authority to divert any funds of TSA to your personal benefit, whether  
2 those funds are derived from your campaign committee or from any other source.

3 In view of the foregoing, the Commission concludes that the Act and Commission  
4 regulations would permit the Hancock committee to donate its remaining campaign funds  
5 to TSA.

6 The Commission notes that the Hancock committee is required to report all  
7 disbursements of its campaign funds. 2 U.S.C. §434(b)(4), (b)(5); 11 CFR 104.3(b). The  
8 committee's payments to TSA would be reportable as other disbursements. 2 U.S.C.  
9 §§434(b)(4)(G), 434(b)(6)(A); 11 CFR 104.3(b)(2)(vi) and 104.3(b)(4)(vi).

10 This response constitutes an advisory opinion concerning the application of the  
11 Act, or regulations prescribed by the Commission, to the specific transaction or activity  
12 set forth in your request. See 2 U.S.C. §437f.

13 Sincerely,

14  
15 Lee Ann Elliott  
16 Chairman  
17

18 Enclosures (AOs 1993-22, 1993-13, 1992-21, and 1985-9)  
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