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FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 23, 1996

MEMORANDUM

AGENDA ITEM
For Meeting of: OCT 31 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 *cm. f m*
Staff Attorney

SUBJECT: Draft AO 1996-44

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 31, 1996.

Attachment

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DRAFT

1
2 **ADVISORY OPINION 1996-44**

3
4 **The Honorable Charles Wilson**
5 **U.S. House of Representatives**
6 **Washington D.C. 20515-4315**

7
8 **Dear Mr. Wilson:**

9
10 **This refers to your letter dated August 10, 1996, which was received by the**
11 **Commission on September 30, 1996. Your request concerns the application of the Federal**
12 **Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to**
13 **the use of campaign funds to move your office furnishings from your home state to**
14 **Washington, D.C.**

15 **You are currently serving as a member of the U.S. House of Representatives**
16 **representing the 2nd Congressional District of Texas. Your principal campaign committee**
17 **is the Wilson Committee ("the Committee"). You state that you are planning to leave**
18 **office; however, rather than returning to Texas, you are planning to remain in Washington,**
19 **D.C. at the conclusion of this Congressional session. As part of the closing of your**
20 **Congressional offices, you wish to use campaign funds for the shipping costs of moving**
21 **items from your Congressional district office in Lufkin, Texas, to Washington.**
22 **Specifically, you describe these items as "framed pictures, art work, and assorted**
23 **memorabilia which have become part of" your district office.**

24 **The Act and Commission regulations provide that excess campaign funds may be**
25 **used for various specific purposes, but may not be converted to the personal use of the**

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1 candidate or any other person.¹ 2 U.S.C. §439a; 11 CFR 113.2(c) and (d). Commission
 2 regulations provide guidance regarding what would be considered personal use of
 3 campaign funds. Personal use is defined as "any use of funds in a campaign account of a
 4 present or former candidate to fulfill a commitment, obligation or expense of any person
 5 that would exist irrespective of the candidate's campaign or duties as a Federal
 6 officeholder." 11 CFR 113.1(g). See Advisory Opinions 1996-14, 1996-9, 1995-47, 1995-
 7 46, and 1995-42.

8 Commission regulations list a number of purposes that would constitute *per se*
 9 personal use.² 11 CFR 113.1(g)(1)(i). Where a specific use of campaign funds is not
 10 listed as personal use, the Commission will make a determination on a case-by-case basis
 11 using the general definition of personal use. 11 CFR 113.1(g)(1)(ii).³

12 Under 11 CFR 113.2(a)(2), excess campaign funds may also be used to pay any
 13 ordinary and necessary expenses incurred in connection with one's duties as a holder of
 14 Federal office. Such expenses include the costs of winding down the office of a former
 15 Federal officeholder for a period of six months after he or she leaves office. See Advisory
 16 Opinion 1996-14.

¹ Commission regulations define the phrase "excess campaign funds" to mean "amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures." 11 CFR 113.1(e).

² Under section 113.1(g)(1)(i), personal use includes, but is not limited to, several specific purposes which are described in the regulations. None of these prohibited personal uses are applicable to the situation here.

³ 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 This response constitutes an advisory opinion concerning application of the Act, or
2 regulations prescribed by the Commission, to the specific transaction or activity set forth in
3 your request. See 2 U.S.C. §437f.

4
5
6 Sincerely,

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8
9 Lee Ann Elliott
10 Chairman

11
12 Enclosures (AOs 1996-14, 1996-9, 1995-47, 1995-46, and 1993-6)
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14

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