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FEDERAL ELECTION
COMMISSION
WASHINGON, D.C.
20463

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 17, 1997

MEMORANDUM

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 1997-11

AGENDA ITEM
For Meeting of: 7-24-97

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for July 24, 1997.

Attachment

1 ADVISORY OPINION 1997-11

DRAFT

2
3 The Honorable Lucille Roybal-Allard
4 U.S. House of Representatives
5 2435 Rayburn Office Building
6 Washington, D.C. 20515-0533

7
8 Dear Ms. Roybal-Allard:

9
10 This responds to your letter dated June 19, 1997, requesting an advisory opinion
11 concerning application of the Federal Election Campaign Act of 1971, as amended ("the
12 Act"), and Commission regulations to the use of campaign funds for tuition and related
13 travel and meal expenses to participate in a language immersion program.

14 You state that the 33rd Congressional District of California, which you represent,
15 includes a large number of non-English or limited English speaking constituents. In your
16 capacity as an elected Representative, you explain that you are often called upon to make
17 presentations and respond to questions in Spanish.¹ It is your belief that improved
18 Spanish language fluency will enable you to be more effective and responsive to the
19 needs of your constituents. In order to improve your fluency in Spanish, you have
20 identified a number of language immersion programs in the United States and Mexico
21 specifically designed to improve fluency in a relatively short period of time. The
22 programs typically require expenditures for travel, meals, and accommodations. You ask
23 whether it is permissible to use campaign funds from your principal campaign committee,
24 Lucille Roybal-Allard for Congress, to pay for all or a portion of the costs of language
25 immersion program offered in the U.S. or Mexico.

¹ You explain that speaking to your constituents in Spanish is important because it is less formal and a more intimate form of communication and dispenses with the need to provide for translation services.

1 Your request includes information regarding the two programs, both of which are
2 of a two week duration. The program in the United States is conducted by the Monterey
3 Language Academy ("the Monterey program"). The costs are listed as follows: \$3,000
4 tuition, \$133 airfare, and lodging between \$1,750 and \$1,825. Thus, the total costs for
5 this program would be nearly \$5,000. The alternate program is conducted by the Center
6 of Bilingual Multicultural Studies in Cuernavaca, Mexico ("the Cuernavaca program").
7 The tuition for the Cuernavaca program varies from \$510 to \$1,335. The latter sum
8 includes not only the registration and two weeks tuition, but also an optional, executive 6
9 hour one-on-one tutorial. The airfare for the Cuernavaca program is \$451 and the lodging
10 costs are \$420. Therefore, the total costs for this program would range between about
11 \$1,400 to \$2,200.

12 Under the Act and Commission regulations, a candidate and the candidate's
13 committee have wide discretion in making expenditures to influence the candidate's
14 election, but may not convert campaign funds to the personal use of the candidate or any
15 other person. 2 U.S.C. §§431(9) and 439a; 11 CFR 113.1(g) and 113.2(d)²; see also
16 Advisory Opinions 1997-2, 1996-45, 1996-20, 1996-19, 1996-9, and 1995-47. A specific
17 exemption to the ban on personal use, however, permits the use of campaign funds to
18 defray any ordinary and necessary expenses incurred in connection with a person's duties
19 as a holder of Federal office. 2 U.S.C. §439a; 11 CFR 113.2(a) and (d). In addition,
20 Commission regulations define personal use as "any use of funds in a campaign account

² 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 1.13.1(e).

1 of a present or former candidate to fulfill a commitment, obligation, or expense of any
2 person that would exist irrespective of the candidate's campaign or duties as a Federal
3 officeholder." 11 CFR 113.1(g).

4 Commission regulations list a number of expense categories that would constitute
5 personal use. 11 CFR 113.1(g)(1)(i). This includes tuition payments, other than those
6 associated with training campaign staff. 11 CFR 113.1(g)(1)(i)(D).³ Where a specific
7 use is not listed as personal use, the Commission makes a determination on a case-by-
8 case basis. 11 CFR 113.1(g)(1)(ii).⁴ Travel expenses, including subsistence expenses
9 incurred during travel, are among those expenses to be analyzed on a case-by-case basis.

10 If such travel involves both personal activities and campaign or officeholder related
11 activities, the incremental expenses that result from personal activities are personal use,
12 unless the person benefiting reimburses the campaign within thirty days for the amount of
13 those expenses. 11 CFR 113.1(g)(1)(ii)(C).

14 Under 11 CFR 113.2(a), excess campaign funds may also be used to pay any
15 ordinary and necessary expenses incurred in connection with one's duties as a holder of
16 Federal office. These include the costs of travel for a Federal officeholder and an
17 accompanying spouse to participate in a function directly connected to *bona fide* official

³ Other expense categories include, but are not limited to: household food items; funeral, cremation or burial expenses; clothing; 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.

⁴ 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 responsibilities, such as a fact-finding meeting or an event at which the officeholder's
2 services are provided through a speech or appearance in an official capacity.⁵

3 The purpose of your participation in the described language immersion program is
4 to improve communication with your constituents. Communication by a member with
5 constituents is part of that Member's representative function. Further, that
6 communication can be seen as an element of the legislative function of a Member which
7 is at the core of the *bona fide* official responsibilities of each Member of Congress.
8 Consequently, participating in the language programs described above is directly related
9 to your official responsibilities as a Federal officeholder. It is also clear that costs of
10 traveling to (and from) and attending the language program chosen would not exist
11 absent your duties as a Federal officeholder. See Advisory Opinions 1997-2 and 1996-
12 45.⁶ The Commission concludes, therefore, that the travel and related expenses and
13 tuition to participate in one of the language immersion programs described in your
14 request could be paid from your campaign funds.⁷ As a factor in this determination, the
15 Commission emphasizes the limited two week duration of the proposed program and,

⁵ The other listed purpose is the costs of winding down the office of a former Federal officeholder for a period of six months after he or she leaves office. 11 CFR 113.2(a)(2); see also Advisory Opinions 1996-44 and 1996-14.

⁶ The circumstances in this request are similar to those in Advisory Opinion 1996-45, where the Commission concluded that a seminar you hosted in your district to focus on the ways in which participants can become more sensitive and responsive to persons from different racial and ethnic backgrounds was connected to that Member's duties as a Federal officeholder. The Commission concluded that the use of campaign funds to pay travel costs for consultants to help run the seminar would not constitute personal use. More recently, in Advisory Opinion 1997-2, the Commission noted the application of section 113.2(a)(1) to the participation and travel expenses of Members and their families to attend a bipartisan Congressional retreat to improve the legislative and political environment of the House of Representatives.

⁷ Since you have not presented a campaign related purpose to the language programs, the analysis of this opinion focuses solely on the elements relevant to your duties as a holder of Federal office. In particular, the application of 11 CFR 113.1(g)(1)(i)(D) regarding tuition for training campaign staff is not discussed.

1 again, its immediate rather than proximate link to a skill central to your role as a Member
2 of Congress, i.e. communication with constituents. The Commission expressly reserves
3 judgment on any other educational programs a Member of Congress may wish to
4 undertake using campaign funds.

5 The Commission notes that the materials describing the language programs list
6 additional costs not directly connected to the language programs. For the Monterey
7 program these are green fees for use of golf courses.⁸ The Cuernavaca program has a
8 schedule of separate costs for half or full day excursions on the weekends after classes, as
9 well as a separate amount for a weekend trip to Acapulco. The Commission notes that
10 section 113.1(g)(1)(i)(G) includes as personal use of campaign funds “[a]dmission to a
11 sporting event, concert, theater or other form of entertainment, unless part of a
12 specific...officeholder activity.” The lack of any substantive link between these activities
13 with the language programs described in your request would mean that any payment for
14 these expenses would be deemed a personal expense, and they could not be paid from
15 campaign funds. 2 U.S.C. §439a and 11 CFR 113.1(g).

16 In view of the fact that any campaign committee disbursements, held permissible
17 in this opinion, are not campaign related, they should be reported as “other
18 disbursements.” The purpose of the disbursements and other information must be
19 disclosed for payments that exceed \$200 in a calendar year to the same payee. 11 CFR
20 104.3(b)(4)(vi); see Advisory Opinions 1997-2, 1996-45 and 1996-44.

⁸ The materials for the Monterey program also describe the availability of the Monterey city health club and the Monterey Bay Aquarium for excursion purposes.

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

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,

**John Warren McGarry
Chairman**

15 Enclosures (AOs 1997-2, 1996-45, 1996-44, 1996-20, 1996-19, 1996-14, 1996-9,
16 and 1995-20)