



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 17, 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2000-02

Rick Hubbard
Rick Hubbard for U.S. Senate
57 Depot Street
P.O. Box 1444
Stowe, VT 05672

Dear Mr. Hubbard:

This refers to your letters dated February 19, and January 19, 2000, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the rental by your campaign committee, Rick Hubbard for U.S. Senate, of personal and real property owned by you.

FACTS

You state that for many years prior to the announcement of your candidacy on September 7, 1999, you have worked as an attorney under your own name in Stowe, Vermont.¹ For several years, you have worked independently on a full time basis as an attorney without other staff support. In this regard, you explain that you rent the top 1 ½ floors of space in a three story commercial building in downtown Stowe.² On the top

¹ In your February 19, 2000 letter you state that you have already qualified as a candidate under 2 U.S.C. §431(2) by having reached \$5,000 in contributions.

² Your request provides additional background regarding the location of your offices. You explain that the commercial area of Stowe (a resort community with a year round population of 3,500) is 3 square blocks. Most of the buildings located in this commercial area are of clapboard frame construction and do not exceed 2-3 stories. The building which houses your office and residence has three stories with your third story being in the top of the building. The 1st floor of the building is occupied by a local family restaurant. Half of the second floor is used as an office by the owner-proprietor of the restaurant. You occupy the remaining half of the second floor and the entire 3rd floor. The buildings in the vicinity are used by small

floor you have your office, together with a desk, a desktop computer, two printers, a scanner, a fax machine, a copier, a notebook computer, a video/television, phones, an answering machine, meeting and conference facilities, shelving, filing cabinets and other office furniture and furnishings. The lower floor consists of the office (and your personal) bathroom, together with your primary residence, with bedroom and related living space.

You explain that a person enters into the leased space through a common door and, from the open interior hallway, either goes up a flight of stairs to the office area or turns left through a door to your personal area. You further explain that for years (for payment and tax purposes), you have split the cost of rent, electricity and other utilities on a 50/50 basis between your law practice office and your personal area. All of the office equipment, machinery, computers and related professional items are owned in connection with your law practice.

You state that you are currently using all of this office space and equipment as campaign headquarters for Rick Hubbard for U.S. Senate. Since announcing on September 7, 1999, you have worked essentially full time on your campaign, and you anticipate continuing this pattern through the November 2000 election. Although you are taking on no additional legal work from new clients, you will occasionally perform follow up attorney services for existing clients.

You further explain that you could have sublet your unused law office facilities to others and leased separate office space for the campaign. However, this would have been both less efficient and more expensive. Consequently, you decided to locate your campaign headquarters in the office portion of the premises. Due to the fact that your single, combined monthly rent payment is for space used 50/50 for office and personal purposes, you request an advisory opinion on the applicability of the "irrespective test" to these "unusual" circumstances. You indicate that you expect no campaign reimbursement for your personal use of the described premises. However, for that half of the monthly rent relating to your office activities, and for all use of your office computers, equipment and related items as discussed above, you believe a fair level of reimbursement from your campaign committee is appropriate. Since you will have some use of this office equipment by your very limited legal practice (which you estimate will average much less than 25% over the entire period through November 2000), you assert that a fair method of payment would be for your committee to reimburse you as follows: as to the portion of rent which applies to office use -- at a rate of 75% of the actual cost; as to use of your office computers, furniture, furnishings and equipment as discussed above -- at a rate which is 75% of the typical rental value of such items of comparable age and serviceability.

commercial enterprises, government services or small professional offices. An example of the occupying establishments include an inn, a post office, an antique dealer and different offices used by a doctor, trader/investor, and contractor. One of these buildings also contains an apartment.

ACT AND COMMISSION REGULATIONS

The Commission has previously stated that, under the Act and Commission regulations, a candidate and the candidate's campaign committee have wide discretion in making expenditures to influence the candidate's election. The Act provides, however, that the candidate and the campaign committee may not convert excess campaign funds to the personal use of the candidate or any other person. 2 U.S.C. §439a; 11 CFR 113.2(d); Advisory Opinions 1995-8, 1994-22, 1994-8, and 1991-1.

The Commission regulations define what would constitute personal use of campaign funds. In general, "personal use" means "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g). The regulations specifically address payments by a committee for rental of a candidate's property, and they provide that personal use includes:

(E) Mortgage, rent or utility payments—

(1) For any part of any personal residence of the candidate or a member of the candidate's family; or

(2) For real or personal property that is owned by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage. 11 CFR 113.1(g)(1)(i)(E)(1) and (2). The effective date of the regulations was April 5, 1995. See 60 *Fed. Reg.* 17193 (April 5, 1995).

APPLICATION TO PROPOSAL

The Commission's Explanation and Justification of these regulations explains the proper application of these definitions as they relate to campaign use of candidate-owned property. It states that, in the past, the Commission has generally permitted campaigns to rent property owned by a candidate or a family member for campaign use, so long as the campaign paid no more than the usual and normal rental. The rule at paragraph (g)(1)(i)(E) provides, however, that the use of campaign funds to rent all or part of a personal residence of the candidate or a family member is personal use, even if part of the personal residence is being used in the campaign. On the other hand, the cited paragraph permits the use of campaign funds for the rental of property owned by the candidate (but not occupied as a residence) or a family member, where the property is rented for campaign purposes and is not part of a personal residence of either the candidate or a family member. A campaign committee may therefore rent, for campaign use, part of an office building owned by the candidate so long as it pays no more than the fair market value. Commission Regulations on Personal Use of Campaign Funds, Explanation and Justification, 60 *Fed. Reg.* 7862, 7865 (February 9, 1995); see also Advisory Opinion 1995-8.

The Commission notes your situation is somewhat unique from the past situations considered by the Commission, in that your office space is in the same building with your personal residence. However, there are several factors which make your proposal permissible under the cited regulation. First, your use of the leased property as both a residence and an office predates your candidacy by several years and, from the detailed description you provide, the leased premises are located in a commercial building. The Commission further notes that the premises serves as your sole office space and that for several years you have followed a tax treatment of the rent paid that reflects the division between residential and office space which you present in your request. Finally, your request would apply campaign funds only to the portion of rent which you previously had ascribed to your law office use. Therefore, for the above reasons and with this limitation in mind, you may use campaign funds to pay the rent of your office space as long as the rental amount charged is not above the usual and normal rental charge for such rental according to the percentages that you suggest.³ See Advisory Opinion 1995-8. The Commission concludes that the use of campaign funds to pay rent and utility costs for the use of office space in the same rental property that also contains your personal residence in these specific circumstances would not constitute personal use under 2 U.S.C. §439a and 11 CFR 113.1(g).

Section 113.1(g) would also permit the rental of your law office equipment to your campaign committee, again, as long as the rental amount charged is not above the usual and normal rental charge for such equipment according to the percentages that you suggest.

The Commission expresses no opinion regarding 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,

(signed)

Darryl R. Wold
Chairman

Enclosures (AOs 1995-8, 1994-22, 1994-8, and 1991-1)

³ This would also be consistent with the Commission's approach in Advisory Opinion 1995-8. If you should charge your campaign less than the usual and normal charge, the difference would constitute a contribution to your campaign. Your law practice does not appear to be a corporation so the contribution would be permissible and treated as contributions by you to your campaign. Commission regulations permit a candidate to make unlimited contributions to the candidate's campaign from personal funds. See 11 CFR 110.10.