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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

November 30, 2000

**AGENDA ITEM**  
For Meeting of: 12-07-00

**MEMORANDUM**

**TO:** The Commission

**THROUGH:** James A. Pehrkon   
Staff Director

**FROM:** Lawrence M. Noble   
General Counsel

N. Bradley Litchfield   
Associate General Counsel

Jonathan M. Levin   
Senior Attorney

**Subject:** Draft AO 2000-37

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for December 7, 2000.

Attachment

1 **ADVISORY OPINION 2000-37**

2  
3 **The Honorable Tom Udall**  
4 **Member of Congress**  
5 **308 East Capitol Street, N.E.**  
6 **Apartment 7**  
7 **Washington, D.C. 20515**

**DRAFT**

8  
9 **Dear Mr. Udall:**

10  
11 **This responds to your letters dated October 25 and 30, 2000, requesting an**  
12 **advisory opinion concerning the application of the Federal Election Campaign Act of**  
13 **1971, as amended ("the Act"), and Commission regulations to the use of campaign funds**  
14 **to purchase and present replica medals for award to veterans of United States Armed**  
15 **Forces who participated in the Normandy landing in Europe on June 6, 1944.**

16 ***Background***

17 **You are a member of the U.S. House of Representatives from the Third**  
18 **Congressional District of New Mexico. Your principal campaign committee is Udall for**  
19 **Us All ("the Committee").**

20 **You propose to use funds of the Committee to purchase replica medals, known as**  
21 **Liberty Medals, from Sims Enterprises, a private company in Kansas, or some other**  
22 **private company. You state that the original Liberty Medals were medals authorized by**  
23 **the Government of France for presentation to U.S. Armed Forces veterans who**  
24 **participated in the 1944 Allied landing at Normandy. The original medals were**  
25 **authorized to be issued and presented to the veterans on or before June 6, 2000, and**  
26 **veterans who did not receive the medals by that date were no longer eligible to have them**  
27 **provided by the French Government.**

28 **Information concerning the possibility of qualifying for the original medals was**  
29 **not widely disseminated in many parts of the country, including New Mexico, so veterans**  
30 **who might have qualified did not apply on a timely basis. After the deadline, as word**  
31 **spread concerning the medals (through announcements by another New Mexico Member**  
32 **of Congress and through letters or communications by veterans to local newspapers and**  
33 **veterans groups), a number of veterans contacted you at your Congressional offices and**

1 your campaign offices for information about obtaining a medal. As your official staff  
2 gathered information concerning the medals, questions arose as to the availability of the  
3 medals for presentation, and you became aware that other members of Congress were  
4 utilizing replica medals for the purpose of honoring qualifying veterans. These replicas  
5 were available through Sims Enterprises.<sup>1</sup> Your official staff continues to receive  
6 inquiries and other communications from veterans concerning the medals.

7       Based on your inquiries to date, you estimate that the Committee would purchase  
8 12 to 24 replica medals. Purchased individually, a medal would cost \$17 and the cost for  
9 a lot of ten, without shipping and handling, would be \$130. Two dozen medals would  
10 thus cost approximately \$328, with approximately \$30 in addition for shipping and  
11 handling costs. At present, you anticipate that the medal recipients would be "veterans  
12 residing in or otherwise constituents of" your Congressional district.

13       Veterans (and perhaps their survivors) who believed they would have qualified for  
14 the original medal would be asked to provide to the Committee "some minimal  
15 'verification' of their ability to have qualified." Such verification could consist of an  
16 affidavit or a copy of a military record or other record indicating participation in the  
17 Normandy landing. You foresee two methods of screening this verification information.  
18 The screening may be done by a member of the Committee, or it may be done by a  
19 veterans group (or groups) in your district.

20       You do not have a specific schedule planned for the presentation of the replica  
21 medals because you are still receiving requests from veterans. At present, you  
22 contemplate that the presentations would occur in "a private setting" where you could  
23 meet with the veteran and his family members at their homes or in a public location, or  
24 the presentations would occur in conjunction with a visit to a veterans organization. You  
25 intend to use the campaign funds for expenses in connection with the presentation of the  
26 replica medals, as well as their purchase.

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<sup>1</sup> You state that, following passage of the June 6 deadline, Sims Enterprises realized that many veterans wanted some commemoration of their participation in the Normandy landing and began to produce replica medals.

1 ***Applicable law and regulations***

2 Under the Act and Commission regulations, a candidate and the candidate's  
3 committee have wide discretion in making expenditures to influence the candidate's  
4 election, but may not convert excess campaign funds to the personal use of the candidate  
5 or any other person. 2 U.S.C. §§431(9) and 439a; 11 CFR 113.1(g) and 113.2(d); see  
6 also Advisory Opinions 2000-12, 1998-1, and 1997-11.

7 Commission regulations provide guidance regarding what would be considered  
8 personal use of campaign funds. Personal use is defined as "any use of funds in a  
9 campaign account of a present or former candidate to fulfill a commitment, obligation or  
10 expense of any person that would exist irrespective of the candidate's campaign or duties  
11 as a Federal officeholder." 11 CFR 113.1(g). Moreover, 2 U.S.C. §439a and 11 CFR  
12 113.2(a) specifically provide that excess campaign funds may be used to pay any ordinary  
13 and necessary expenses incurred in connection with one's duties as a holder of Federal  
14 office.

15 Commission regulations list a number of purposes that would constitute personal  
16 use *per se*. 11 CFR 113.1(g)(1)(i). Where a specific use is not listed as personal use, the  
17 Commission makes a determination, on a case-by-case basis, whether an expense would  
18 fall within the definition of personal use at 11 CFR 113.1(g). 11 CFR 113.1(g)(1)(ii).  
19 The regulations specifically list certain examples of expenses subject to a case-by-case  
20 analysis, including travel expenses. *Id.* Commission regulations further provide that any  
21 use of funds that would be personal use under 11 CFR 113.1(g)(1) will not be considered  
22 an ordinary and necessary expense in connection with the duties of a Federal  
23 officeholder. 11 CFR 113.1(g)(5).

24 In defining what constitutes personal use, travel expenses, including subsistence  
25 expenses incurred during travel, are among those specifically listed examples to be  
26 analyzed on a case-by-case basis. 11 CFR 113.1(g)(1)(ii)(C). If the travel expenses  
27 would exist irrespective of the candidate's campaign or duties as a Federal officeholder,  
28 they would entail a personal use. If such travel involves both personal activities and  
29 campaign or officeholder related activities, the incremental expenses that result from

1 personal activities are personal use, unless the person benefiting reimburses the campaign  
2 within thirty days for the amount of those expenses. 11 CFR 113.1(g)(1)(ii)(C).

3 *Analysis*

4 The proposed purchase of the replica medals and their presentation to military  
5 service veterans is a form of community service that is an integral part of the duties of a  
6 Member of Congress. Such activity allows Members to honor and give formal  
7 recognition for the patriotic achievements of the veterans who are their constituents.  
8 This type of recognition, if it involves the use of campaign funds to purchase an  
9 intrinsically valuable item for the veterans, would be problematic under the Commission  
10 regulations if it extends beyond an honorific purpose and entails the use of campaign  
11 funds to confer a significant personal benefit on the recipient veteran. However, in this  
12 situation, the replica medals are low in cost and have little intrinsic value, and the benefit  
13 to the veteran is the recognition of his service by a Member of Congress. Therefore, you  
14 may use Committee funds to purchase the replica medals for distribution to the veterans.<sup>2</sup>  
15 The fact that selections of eligible veterans may be made either by a member of your  
16 Committee or by veterans groups in your district makes no difference in the  
17 circumstances presented here.

18 For the reasons stated above, you may use Committee funds for the expenses  
19 incurred in your presentation of these medals to the veterans, whether done in a private  
20 presentation to the veteran and his family or in conjunction with a visit to a veterans  
21 organization. It appears that the expenses would primarily relate to your travel to and  
22 from these events, which is one of the specific examples of expenses to be evaluated on a  
23 case-by-case basis. In view of the fact that such travel would not exist irrespective of  
24 your officeholder duties, the Committee may pay for these expenses but if, for some  
25 reason, there are incremental expenses resulting from personal activities (e.g., by you or  
26 an accompanying staff member), the person benefiting must reimburse the Committee for  
27 the amounts of those expenses within thirty days. 11 CFR 113.1(g)(1)(ii)(C).

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<sup>2</sup> On another occasion, the Commission approved the use of campaign funds by a Member of Congress to perform a community service with respect to another facet of officeholder duties, which related to public policy. The Member wished to use the funds for transportation and lodging for consultants who were

