FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 9, 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2004-27

William R. Neale
Treasurer
Quayle 2000, Inc.
c/o Krieg DeVault LLP
12800 North Meridian St., Suite 300
Carmel, IN 46032

Dear Mr. Neale:

This responds to your letter dated June 17, 2004, and facsimile transmission dated July 13, 2004, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971 ("the Act"), as amended by the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (2002) ("BCRA"), and Commission regulations, to Quayle 2000, Inc.'s ("the Committee") proposed use of campaign funds to reimburse two former employees for unpaid salary dating back to 1999.[1]

Background

In 1999, the Committee received matching funds and subsequently was audited, pursuant to the Presidential Primary Matching Payment Account Act ("the Matching Payment Act"), 26 U.S.C. 9031-9042. In 2002, the Commission approved the Audit Report and determined that no repayment of Federal matching funds was required. After the audit, the Committee had campaign funds remaining in its account.

[1] Quayle 2000 Exploratory Committee, Inc., registered with the Commission on February 3, 1999, as the principal campaign committee of former Vice President Dan Quayle when he ran for President in the 2000 election cycle. In an amended Statement of Organization dated May 27, 1999, Quayle 2000 Exploratory Committee, Inc. changed its name to Quayle 2000, Inc.

You state that two employees of the Committee, in order to permit the Committee to preserve funds, volunteered their services from March 1 to March 31, 1999, when the Committee was low on funds. Each employee signed an undated statement entitled "Statement of Volunteer Services" foregoing payment of salary for March 1999 pursuant to 11 CFR 116.6.[2] The Committee would now like to pay these former employees $2,125 and $5,667, respectively, in recognition of the fact that but for their volunteering services, they would have received these funds as compensation. Because the Committee's account no longer contains Federal matching funds and the Committee does not owe a repayment, the analysis below focuses on the Act rather than on the Matching Payment Act. *See generally* 11 CFR 9038.2.

Question Presented

May the Committee pay two former employees for the amount of salary they would have received for campaign work performed in March 1999, where the employees chose at the time to forego their salaries and to work as volunteers?

Legal Analysis and Conclusions

No, the Committee may not use its Federal campaign funds for payments in 2004 of amounts related to 1999 volunteer services. As explained below, these payments are not permissible uses of campaign funds under the Act and Commission regulations because of the Act's restrictions on permissible uses of campaign funds, and because of the Act's provisions requiring the prompt disclosure of outstanding debts and obligations.

Under the Act, as amended by BCRA, there are four categories of permissible uses of contributions accepted by a Federal candidate: (1) otherwise authorized expenditures in connection with the candidate's campaign for Federal office; (2) ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of Federal office; (3) contributions to organizations described in 26 U.S.C. 170(c); and (4) transfers, without limitation, to national, State or local political party committees. 2 U.S.C. 439a(a); *see also* 11 CFR 113.2. Such uses must not, however, result in the conversion of the campaign funds to "personal use" by any person. 2 U.S.C. 439a(b)(1); 11 CFR 113.2. Since 1995, the Commission's regulations have defined "personal use" as "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); *see* 2 U.S.C. 439a(b)(2).

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[2] During March 1999, one individual would have been paid $6,250, but was actually paid $4,125, leaving an unpaid amount of salary of $2,125. The second individual would have been paid $5,667, but was not paid any of this amount. Thus, although both employees signed "Statements of Volunteer Services" for March 1999, one employee was actually paid for approximately two-thirds of his services for this month. The Commission does not address this payment of $4,125 because this payment is a past action that is outside the scope of this advisory opinion. *See* 11 CFR 112.1(b).

In BCRA, Congress deleted "any other lawful purpose" from the list of permissible uses of campaign funds in section 439a. The Explanation and Justification for 11 CFR 113.2 discussed the significance of this deletion:

> The Commission … is removing and reserving paragraph (d) of former section 113.2, which referred to "any other lawful purpose." With this revision, it is now clear that in addition to defraying expenses in connection with a campaign for federal office, campaign funds may be used only for the enumerated non-campaign purposes identified in paragraphs (a), (b) and (c) of section 113.2, and that *this listing of permissible non-campaign purposes is exhaustive.*

Explanation and Justification for Disclaimers, Fraudulent Solicitations, Civil Penalties, and Personal Use of Campaign Funds; Final Rule, 67 Fed. Reg. 76,970, 76,975 (Dec. 13, 2002) (emphasis added).[3]

Commission regulations provide that if a political committee does not pay an employee for services rendered to the political committee in accordance with an employment contract or a formal or informal agreement to do so, the unpaid amount either may be treated either as a debt owed by the political committee to the employee, or, provided that the employee signs a written statement agreeing to be considered a volunteer, converted to a volunteer services arrangement. 11 CFR 116.6(a); *see also* Explanation and Justification for Debts Owed by Candidates and Political Committees; Final Rule, 55 Fed. Reg. 26,378, 26,383 (June 27, 1990). In the situation you describe, two employees agreed to treat their salaries for March 1999 as volunteer services rather than paid services pursuant to 11 CFR 116.6(a), and the employees signed statements to that effect.

The Act and Commission regulations require that the amount and nature of outstanding debts and obligations owed by a political committee be disclosed. 2 U.S.C. 434(b)(8); 11 CFR 104.3(d). Further, debts and obligations must be initially disclosed in a timely manner, and must be continuously reported thereafter until extinguished. 11 CFR 104.11(a) and (b); *see also* Advisory Opinions 1997-21, 1991-9, and 1977-58. The Committee has not ever reported the unpaid amounts of salaries as debts or obligations and therefore there are no debts or obligations that could give rise to an authorized expenditure at this time.[4] By initially treating these two persons' services as volunteer services in 1999, and not reporting salary obligations as debts owed by the Committee at any time thereafter, the Committee has never treated the amounts in question as an authorized expenditure. As such, payment at this time for services that had been

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[3] *See also* FEDERAL ELECTION COMMISSION ANNUAL REPORT 2003 at 41, addressing section 439a in a legislative recommendation submitted to the Congress ("Section 439a, as amended by BCRA, lists four explicitly permitted uses of campaign funds … However, unlike the pre-BCRA version of section 439a and unlike the pre-BCRA regulations … the use of campaign funds for "any other lawful purpose" … is no longer listed as a statutorily permitted use. In post-BCRA rulemakings and advisory opinions, the Commission has had no choice but to interpret this statutory deletion as meaning that the list of permissible uses in section 439a(a) is exhaustive.").

[4] In addition, allowing the Committee to pay these amounts in 2004 would mean that, contrary to the volunteer services arrangements in the situation you describe, unreported debts or obligations did exist. Because these amounts were neither initially disclosed in a timely manner nor continuously reported thereafter until extinguished, permitting payment would result in reporting violations by the Committee.

deemed volunteer services since 1999 cannot now be treated as an authorized expenditure of the Committee.

Thus, in the situation you describe, payment of the unpaid salary amounts in 2004 is not an "otherwise authorized expenditure" in connection with former Vice President Quayle's 2000 campaign because the Committee properly treated the amounts involved as volunteer services and not as debts or obligations of the Committee. 2 U.S.C. 439a(a)(1). In addition, the proposed payments would not comply with the other three permissible uses set forth in 2 U.S.C. 439a. They are not ordinary and necessary expenses incurred in connection with duties of an individual as a holder of Federal office because former Vice President Quayle is not a Federal officeholder. The payments are also not contributions to an organization described in 26 U.S.C. 170(c). Lastly, they are not transfers to a national, State or local committee of a political party. 2 U.S.C. 439a(a)(2), (3) and (4). Consequently, because the payments to these two former employees of the Committee would not be one of the permitted uses of contributions, the payments are impermissible under 2 U.S.C. 439a and 11 CFR 113.2.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that if there is a change in any of the facts or assumptions presented and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requester may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

Bradley A. Smith
Chairman

Enclosures (AOs 1997-21, 1991-9, and 1977-58)