



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE

FROM: COMMISSION SECRETARY *MWD*

DATE: September 7, 2004

SUBJECT: COMMENT: DRAFT AO 2004-27

Transmitted herewith is a timely submitted comment by William R. Neale, Treasurer for the Quayle 2000 Committee, regarding the above-captioned matter.

Proposed draft Advisory Opinion 2004-27 is on the agenda for Thursday, September 9, 2004.

Attachment

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2004 SEP -7 P 12:53



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September 3, 2004

Commission Secretary
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Advisory Opinion 2004-27

Dear Commissioners:

This letter is written in response to the General Counsel's Draft Advisory Opinion 2004-27. The proposed result in the draft is unfair. It prevents the Quayle committee from making whole two former employees of the campaign. We believe this proposed opinion should be reassessed and the payments should be authorized as legal campaign expenses.

The draft opinion analyzes our request in the context of excess campaign funds. However, we believe that the discretionary payments to these two prior employees for actual campaign services are more appropriately analyzed as wind down expenses. According to the Commission's regulations, "Winding down costs are costs associated with the termination of political activity related to a candidate's seeking his or her nomination for election such as the costs of complying with the post election requirements of the Federal Election Campaign Act and the Presidential Primary Matching Payment Account Act, and other necessary administrative costs associated with winding down the campaign including office space rental, staff salaries, and office supplies. Winding down costs are qualified campaign expenses." 11 C.F.R. § 9034.11(a) (emphasis added).

The proposed payments to former bona fide campaign employees are related to the candidate seeking the nomination. The Quayle campaign is not trying to pay volunteers who were never on the campaign's payroll, nor is the campaign proposing to pay these individuals a bonus for their services. The campaign is attempting only to make a discretionary payment to these individuals, out of fairness, as just compensation. These are payments for legitimate campaign services. The fact that these individuals made a sacrifice at a time when the campaign had no funds to pay them should not mean that the campaign is forever foreclosed from paying

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them for their services. The campaign is simply seeking to make these individuals whole now that it has the resources to do so.

Further, the proposed draft places form over substance. The draft appears to suggest that had the committee not treated these individuals as volunteers, and instead had reported the temporarily foregone salaries as debts to the individuals, then the campaign would have been able to extinguish the debt. In either case, however, the committee would now be paying reasonable compensation for actual services rendered. The Commission should analyze this request for what it is – a unique circumstance – and permit the campaign to pay these former employees their previously foregone salaries.

Sincerely,



William R. Neale
Treasurer

cc: Office of the General Counsel