

FRIENDS of "DUKE" CUNNINGHAM

FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL

July 29, 2005

2005 AUG -3 A 11:41

Lawrence H. Norton
Office of the General Counsel
Federal Election Commission
999 E. Street N.W.
Washington, DC 20463

AOR 2005-11

Dear Mr. Norton:

I am the Treasurer of Friends of Duke Cunningham, Representative Randall "Duke" Cunningham's principal campaign committee (the "Committee"). I request an advisory opinion from the Federal Election Commission (the "FEC") regarding whether it is permissible for the Committee to pay legal fees and expenses incurred by Representative Cunningham associated with a grand jury investigation that has been convened to examine his conduct as a candidate for, and as a member of, the United States House of Representatives.

The United States Attorney for the Southern District of California recently convened a grand jury purporting to investigate matters related to Representative Cunningham's conduct in office and campaign fundraising (see media reports attached hereto as Exhibit A). The grand jury has subpoenaed testimony from Representative Cunningham's congressional staff as well as records from the files of his congressional office. The grand jury has also subpoenaed records pertaining to contributions to Representative Cunningham's campaign accounts, and the Committee's fundraising activities. While the details of the grand jury's investigation are unknown, it is clear that the investigation is directly related to Representative Cunningham's conduct as a candidate for federal office and as a federal officeholder. Accordingly, Representative Cunningham seeks guidance regarding whether it is permissible for the Committee to pay legal fees and expenses incurred in connection with the grand jury investigation and other proceedings, if any, that may relate to the same operative facts.

A federal officeholder may use campaign funds to pay legal expenses as long as those legal expenses do not constitute a personal use. 21 U.S.C. 439a, 11 C.F.R. 113.1(g)(1)(ii)(A), Advisory Opinion 2003-17. Thus, campaign funds may be applied to legal expenses as long as such expenses would not "exist irrespective of the candidate's campaign." 11 C.F.R. 113.1(g). It is well established that legal expenses in defense of government investigations relating directly to a candidate's campaign activities or the activities of a federal officeholder may be paid for with campaign funds. Advisory Opinions 2003-17; 1998-1; 1997-12, 1996-24; and 1995-23; Advisory Opinion 2000-40.

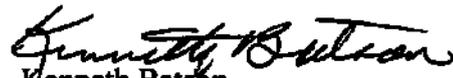
Moreover, the FEC allows federal officeholders to use campaign committee funds to respond to media allegations of improper campaign or official activities. Advisory Opinion 1998-1. In so doing, the FEC has recognized that, because the activities of officeholders may receive heightened scrutiny and media attention, expenses for legal services in connection with

media inquiries are not personal expenditures. Advisory Opinion 1998-1 ("any legal expense that relates directly and exclusively to dealing with the press, such as preparing a press release, appearing at a press conference, or meeting or talking with reporters, would qualify for 100% payment with campaign funds because [the person is] a candidate or federal officeholder").

The Committee intends to notify all current contributors that Representative Cunningham intends to pay legal fees and expenses incurred in connection with this investigation upon receiving approval from the FEC to do so. Should any contributors object to the use of their contributions for this purpose, the Committee will donate the amount of their prior contribution to the National Republican Congressional Campaign Committee. Pursuant to federal regulations, the Committee will maintain appropriate documentation of any disbursements made to pay legal fees and expenses in connection with the investigation and other proceedings, if any, that may relate to the same operative facts. Likewise, the Committee will disclose such expenditures as required under the pertinent regulations.

Please feel free to contact me with any questions regarding this request, and I look forward to your prompt response.

Sincerely,


Kenneth Batsbn
Treasurer
Friends of Duke Cunningham

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The San Diego Union-Tribune

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Lawmaker's home sale questioned

Cunningham defends deal with defense firm's owner

By Marcus Stern
COPY NEWS SERVICE

June 12, 2004

WASHINGTON — A defense contractor with ties to Rep. Randy "Duke" Cunningham took a \$700,000 loss on the purchase of the congressman's Del Mar house while the congressman, a member of the influential defense appropriations subcommittee, was supporting the contractor's efforts to get tens of millions of dollars in contracts from the Pentagon.

Mitchell Wade bought the San Diego Republican's house for \$1,675,000 in November 2003 and put it back on the market almost immediately for roughly the same price. But the Del Mar house languished unsold and vacant for 262 days before selling for \$975,000.

Meanwhile, Cunningham used the proceeds of the \$1,675,000 sale to buy a \$2.55 million house in Rancho Santa Fe. And Wade, who had been suffering through a flat period in winning Pentagon contracts, was on a tear — reeling in tens of millions of dollars in defense and intelligence-related contracts.

In an interview Wednesday, Cunningham conceded that the circumstances surrounding the transaction could raise "fair" questions, but he insisted that the real estate deal was legitimate and independent of his efforts to help Wade win contracts.

"My whole life I've lived aboveboard," Cunningham said. "I've never even smoked a marijuana cigarette. I don't cheat. If a contractor buys me lunch and we meet a second time, I buy the lunch. My whole life has been aboveboard and so this doesn't worry me."

Later, he added, "The last thing I would do is get involved in something



Rep. Randy "Duke" Cunningham, R-Secorville

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that, you know, is wrong. And I feel very confident that I haven't done anything wrong."

Congressional and political watchdog organizations expressed concerns, saying the circumstances raise questions about whether the transaction might constitute an illegal campaign contribution or even an official bribe.

"This doesn't look good at all," said Larry Noble, director of the Center for Responsive Politics. "It doesn't look like something that was on the up and up."

"The potential conflicts here are enormous," added Brad White, director of investigations for Public Citizen's Congress Watch.

Wade was traveling without access to a telephone last week, according to Scotty Brumett, an official of Wade's company, MZM Inc. Brumett said Wade purchased the two-story, four-bedroom, three-and-a-half-bath residence to raise MZM's corporate profile in San Diego.

"We were looking at expanding our company presence in San Diego," Brumett said. "We looked at the property and thought it would work for us. But after we bought it, we realized that it did not meet our security or our corporate needs."

So the company placed it back on the market within one month of purchasing it, where it stayed for more than eight months, selling eventually for \$700,000 less than the price Wade gave Cunningham.

"I don't know why it didn't sell," said listing agent Elizabeth Todd, a Realtor with the Willis Allen Co. in Del Mar. "I honestly don't. I mean, it's a house in Del Mar west of I-5 and it's a good-sized house. I honestly don't know why."

No Realtor was formally involved when Cunningham sold the house to Wade. But Todd had set the asking price for Cunningham at \$1,675,000 and sent a table of comparable house sales to Wade justifying the price, she and Cunningham said. He didn't hire Todd as the listing agent and never paid her a fee, she added. Nor was the house ever posted in the Realtors' multiple listing service, she added.

Property records don't list Wade or MZM as the buyer of Cunningham's house. Instead, the records state that Cunningham sold the house to 1523 New Hampshire Avenue LLC, Nevada state business records show that Wade owns that company, too. It is the address of his Washington, D.C., office.

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members, acting under the supervision of the chairman and with input from members of the committee, create the initial draft of the spending bill.

With the chairman's approval, subcommittee members are able to insert targeted provisions, frequently benefiting companies, schools or other projects in their congressional districts. This process goes on largely behind closed doors, and the language of the bill rarely identifies the intended beneficiary or the subcommittee member responsible for the provision. Subcommittee members frequently win support for their pet provisions by supporting the provisions of other members.

"It's almost like a swap meet sometimes," said Eric Miller, senior defense investigator for the Project On Government Oversight.

After the draft is completed, the subcommittee, full committee and House must approve the legislation.

Asked if he had supported funding requests benefiting MZM, Cunningham said, "Oh, sure. Just like I have supported Qualcomm and everything else. Titan. SAIC. TRW."

MZM has also been a major contributor to Cunningham's political campaigns, having donated \$19,000 in the 2003-04 election cycle.

Asked if he and Wade were friends, Cunningham answered, "No more than I am with (Qualcomm founder) Irwin Jacobs or (Titan Corp. founder) Gene Ray or any of the other CEOs."

Nobody would equate MZM, which is headquartered in the trendy Dupont Circle area in Washington, with San Diego-based giants Qualcomm and Titan. Nor would anyone equate Wade with Jacobs or Ray. Wade was a Pentagon program manager before launching MZM in 1993, and he struggled to get contracts as recently as three years ago.

But in 2003 and 2004, roughly around the time of the house transaction, MZM's fortunes began to soar. In fiscal year 2003, it received \$41 million in defense contracts. Since then, MZM has added tens of millions of dollars in additional contracts, including a \$5 million sole source contract to provide interpreters in Iraq.

In 2004, MZM had \$66 million in revenues, according to *Washington Technology* magazine, which put the relative corporate newcomer on its 2005 list of "Top 100 Federal Prime Contractors."

MZM offers a broad range of consulting services for national security, intelligence, law enforcement and defense agencies.

Cunningham said he couldn't discuss the MZM programs he's helped advance because they are "very, very classified."

Brunett, the MZM official, refused to discuss any of MZM's contracting activities, saying, "It's government proprietary information and it's also classified."

But MZM's corporate Web site boasts that during 2004, "MZM Inc. experienced significant growth, tripling revenues since the beginning of the year and increasing staff by 285 percent. We look forward to continued growth in 2005."

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Contributing to this report was CNS correspondent Jerry Kammer; special correspondents Rosemary Peterson, Kelly Bennett, Paul Nuss; and Union-Tribune researcher Cecilia Iniguez. Marcus Stern: marsus.stern@csdnet.com

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Cunningham, defense contractor have more ties

By: WILLIAM FINN BENNETT - Staff Writer

The web of connections between Rep. Randy "Duke" Cunningham and a defense contractor continued to grow Friday, as did questions about the relationship between the contractor and the congressman.

Newly discovered information Friday showed that a subcommittee on which the North County Republican served last year authorized a \$100,000 federal grant to a foundation controlled by the contractor, a foundation for which Cunningham's wife and one of his daughters serve on an advisory council.

The disclosures about the foundation's connection to Cunningham are the latest in a series of revelations about the relationship between Cunningham and the contractor, whose company has received millions in defense contracts. Cunningham serves on a House subcommittee that controls military expenditures.

This week, Democrats and watchdog groups called for an investigation into whether the contractor, Mitchell J. Wade of the defense firm MZM Inc., overpaid Cunningham — possibly by as much as \$700,000 — when he purchased the congressman's Del Mar home.

Critics have also called for an investigation into Cunningham's living arrangements on Wade's 42-foot yacht in a Washington Marina.

Cunningham is a member of the House Appropriations Defense Subcommittee, which oversees

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military expenditures and influences the awarding of defense contracts to firms such as MZM.

Supporters of an investigation allege that the connections between Wade and Cunningham led to more support for contracts for Wade's company, which they say would be an ethical violation.

In the 2004 fiscal year, MZM received more than \$65 million in defense contracts, cracking the list of the top 100 U.S. defense contractors nationwide.

Cunningham has said in prepared statements this week that his relationship with Wade has been "above board" and appropriate. Cunningham has not returned repeated phone calls from the North County Times.

The federal grant that came into question Friday involves a subcommittee on which Cunningham served and The Sure Foundation Inc., with which the Wade and Cunningham families are involved.

Wade is the treasurer of the foundation. Wade's wife, Christine Wade, is president emerita of the foundation. Cunningham's wife, Nancy Cunningham, and one of his daughters April, sit on the advisory council for the foundation, which raises money to help refugee children.

Congressional records show the House Appropriations Committee's District of Columbia subcommittee, on which Cunningham served as vice chairman last year, in October authorized a \$100,000 grant to The Sure Foundation.

Neither MZM officials nor Sure Foundation officials returned phone calls Friday for comment about the grant.

Requests for an interview with Cunningham were denied Friday. However, in an e-mail to the North County Times, Cunningham wrote: "I have no further comment on this speculative information," the statement read. "I am working on a comprehensive statement that will address issues that have been raised recently."

Connections keep coming

Controversy has swirled around Cunningham this week, with newspaper reports of other connections between Wade and the eight-term congressman, including questions about whether Wade overpaid when purchasing Cunningham's home.

On Sunday, news surfaced that in late 2003, another company controlled by Wade purchased Cunningham's Del Mar home for \$1.66 million. Property sales records show that the average sales price for similar-size homes in the same area between March and December of that year was more than \$500,000 less than what Wade paid for the home.

Wade's company then resold the property in October 2004 for \$975,000 — a \$700,000 loss. The average sales price for similar-size properties in that area between March and December 2004 ran \$300,000 more than Wade's sale price.

On Tuesday, the North County Times learned of another tie between the men. While in Washington, Cunningham stays at least part of the time on a 42-foot yacht anchored at a Washington marina on the Potomac River. U.S. Coast Guard records show that the boat, called "Duke Str," is owned by Wade.

In response to North County Times inquiries on the boat and his living arrangements, Cunningham sent a three-sentence statement saying that he pays to stay on the boat and that he plans to produce records and documents to prove that.

In addition to the real estate deal and the boat and foundation connections, there are other monetary connections between Cunningham and the defense firm's president.

Wade, his wife and a political action committee for MZM donated a combined \$24,000 to

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Cunningham's campaign fund from 2001 to 2003, Federal Election Commission documents show. Much of the money from MZM's political action committee, a group designed to raise campaign funds, was donated by MZM employees.

Washington reacts

Washington politicians split along party lines when reacting to the news of Cunningham's connections to the contractor. Democrats have called for an investigation, while Republicans have defended Cunningham.

During a press briefing Tuesday, House Majority Leader Tom DeLay, R-Texas, himself under pressure on allegations of unethical conduct, defended the former Top Gun pilot as an "honorable man" when queried about Cunningham's real estate deal.

When asked about the transaction Thursday, House Minority Leader Nancy Pelosi, D-San Francisco, told reporters that the House Ethics Committee should "do its job."

The House Ethics Committee is not yet functioning this year as Democrats and Republicans bicker over staffing issues.

Asked Wednesday about Cunningham's woes, House Speaker Dennis Hastert, R-Ill., told reporters that questions over the real estate transaction amounted to one more reason why the Ethics Committee has to get up and running.

In a Friday article, the San Diego Union-Tribune reported that an unnamed source in the U.S. Department of Justice said Thursday that the FBI had begun an inquiry into the home sale.

Asked by the North County Times to confirm a possible investigation Friday, Department of Justice Washington spokesman Bryan Sierra said: "The department has no comment on that particular report."

A TV news station, KGTV, reported Friday that the U.S. Attorney's Office has launched an investigation into the connections between Cunningham and the contractor.

The U.S. Attorney's Office would not confirm or deny the existence of that investigation.

On Friday, Washington-based Citizens for Responsibility and Ethics in Washington — which calls itself "a nonprofit progressive, legal watchdog group" — called on the House Ethics Committee to launch its own investigation into the real estate transaction.

"The fact that it was sold at such a price to someone with business before Cunningham's committee makes the deal all the more suspicious," Melanie Sloan, the organization's executive director, wrote in a Friday news release.

In a Friday press teleconference in San Diego, the national group Campaign for a Cleaner Congress called on Cunningham to return the \$700,000 that MZM lost when it sold Cunningham's Del Mar home "to avoid any appearance that they intended to bribe you for your support in winning their government contracts."

The group also asked Cunningham to resign from the House Defense Appropriations Subcommittee and to release all correspondence between the congressman and Wade and his companies.

And the group called on Cunningham to come forward with an explanation of the facts, saying the congressman should "step up to the plate and come forward with the truth."

"Let's give him a chance," said Stanley Zubei, an attorney and a member of a newly formed state offshoot of Campaign for a Cleaner Congress.

Zubei added that the more questions that surface about Cunningham and MZM the more "the

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burden shifts to the congressman to say no, no ... it didn't go down that way. Here's what really happened."

Contact staff writer William Finn Bennett at (760) 740-5426 or wbennett@nctimes.com. Staff writer Erin Schultz contributed to this report.

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Posted on Thu, Jul. 21, 2005

Prosecutors subpoena Cunningham aide

*RDC

WASHINGTON (AP) - A top aide to Rep. Randy "Duke" Cunningham has been subpoenaed to testify in California as federal prosecutors investigate the congressman's relationship with a defense contractor.

The aide, Cunningham's legislative director Nancy Lifset, notified the House of Representatives of the subpoena in accordance with House rules. The reading clerk announced it on the House floor Wednesday evening.

Cunningham, R-Rancho Santa Fe, was on the floor at the time talking with Brian Bilbray, a former San Diego area-congressman who's now a lobbyist.

Cunningham's attorney did not immediately return calls for comment and Lifset could not immediately be reached.

The announcement said Lifset was being asked to testify and produce documents by authorities in the Southern District of California, where a federal grand jury has convened to investigate Cunningham's relationship with Mitchell Wade, founder of defense firm M2M Inc.

According to a staff directory produced by Congressional Quarterly, Lifset's duties as legislative director include overseeing Cunningham's work on the defense Appropriations committee, where he has said he helped M2M and other companies win contracts.

The investigation began after reports last month that Wade bought Cunningham's Del Mar house for a possibly inflated price, and that Cunningham was living rent-free on Wade's boat.

Cunningham has denied wrongdoing. He announced last week that he would not seek re-election to a ninth term in Congress next year.

Steve Clark, first assistant U.S. attorney for the Southern District of California, said the department cannot comment beyond confirming an investigation is under way.

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Lawmaker Subpoenaed in California Case

Rep. Randy "Duke" Cunningham (R-Calif.), told the House yesterday that he has been served with a document subpoena in Imperial County, Calif. His announcement, required by House rules, was read on the House floor.

The subpoena was unrelated to

a real estate transaction by Cunningham that is under investigation by federal authorities in California.



Rep. Randy "Duke" Cunningham (R-Calif.)
(Dennis Cook - AP)

It was filed by a lawyer representing Imperial County in a lawsuit by a man who claims he was beaten in 2003 by a Bureau of Land Management ranger. The lawyer, Michael R. Capizzi, said he filed the subpoena to get written communications between the plaintiff and Cunningham, who made an inquiry on the plaintiff's behalf. Cunningham has complied with the subpoena.

The San Diego Union-Tribune has reported that the FBI is investigating and a grand jury is looking into the November 2003 sale of Cunningham's Del Mar home to Mitchell Wade, president of the contracting firm MZM Inc.

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Cunningham, a member of the subcommittee on Defense Department appropriations, sold the house to Wade for \$1.7 million. Wade put the house back on the market shortly after buying it and took a \$700,000 loss on it a year after the initial sale.

About the same time, little-known MZM Inc., which is based in Washington, began receiving large government contracts. Cunningham has denied wrongdoing. An MZM spokesman did not immediately return a call for comment Monday.

Generic AIDS Drugs Get Tentative FDA Approval

Two generic versions of a major AIDS drug were tentatively approved by the Food and Drug Administration yesterday. The agency said it was giving tentative approval to applications for nevirapine tablets manufactured by Ranbaxy Laboratories Ltd. in Gurgaon, India, and Aurobindo Pharma Ltd. in Hyderabad, India.

These are the first generic versions of Boehringer Ingelheim's Viramune brand.

The new generic versions will not be immediately available in the United States because of patent exclusivity rules, but the approval means the generic versions meet the FDA's standards and can be used by relief organizations outside the United States funded by President Bush's \$15 billion AIDS relief plan.

Nevirapine helps keep the AIDS virus from reproducing. It is used in combination with other antiretroviral agents.

Army Fills Post Of Deposed General

The Army announced it has filled the job vacated by Col. Janis L. Karpinski, the former brigadier general who was removed from command and reduced in rank as a result of investigations stemming from the Iraq prisoner-abuse scandal.

Army Reserve Col. John E. Cornelius has been assigned to command the 800th Military Police Brigade, based in Uniondale, N.Y. The brigade had overall responsibility for more than a dozen detention facilities in Iraq when the incidents at the Abu Ghraib prison were photographed by military police soldiers.

Cornelius, who most recently commanded the 2nd Simulation Exercise Group, 1st Brigade, 78th Division, in Bristol, R.I., graduated from the U.S. Military Academy at West Point in 1978 and later graduated from the Basic Airborne Course and Ranger School, according to his official Army biography. He joined the

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Army Reserve in 1983 and among several other assignments served as the brigade operations officer for the 800th MP Brigade.

Top Army officials determined that Karpinski was not directly linked to prison abuse but faulted her for lapses in leadership. President Bush withdrew Karpinski's rank earlier this year.

-- Compiled from reports by staff writer Josh White and news services

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