

FRIENDS of "DUKE" CUNNINGHAM

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2005 SEP -2 P 2:27

August 30, 2005

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

Supplement to  
ADR 2005-11

Dear Mr. Norton:

Please accept this letter as a supplement to my letter of July 29, 2005, in which I requested an advisory opinion from the Federal Election Commission ("FEC") regarding the propriety of using funds donated to the Friends of Duke Cunningham ("the Committee") to defray legal expenses and costs incurred by Representative Cunningham in connection with a grand jury investigation of his conduct in office and campaign fundraising. I am writing to report that, as promised in my initial letter, the Committee has notified all current contributors that Representative Cunningham intends to use Committee funds to pay legal fees and expenses incurred in connection with this investigation. Representative Cunningham provided each of the Committee's contributors with the option to object to the use of their contributions for this purpose. The Committee notified its more than 700 contributors and I am pleased to report that only a tiny number (33) of the contributors objected to the Committee's proposed use of its funds to defray Representative Cunningham's legal costs. In fact, many contributors expressed affirmative support for use of their contributions to pay Representative Cunningham's legal fees (see sample responses in attached exhibit). As promised, with respect to the handful of contributors who did express an objection, the Committee will donate the amount of each of these donors' contributions to the National Republican Congressional Campaign Committee or otherwise honor their request for a refund.

I also wanted to take this opportunity to clarify the Committee's understanding of the law and prior FEC guidance on this issue. It has been suggested recently that the FEC should defer its decision regarding the Committee's request for an advisory opinion until such time as the grand jury has determined whether it will issue indictments of Representative Cunningham or others. The Committee is unaware of any basis in federal regulations or prior FEC practice to defer issuing the requested advisory opinion. First, FEC regulations require the issuance of the requested advisory opinion within 60 days of the date the FEC received and qualified the request, August 3, 2005. 11 C.F.R. § 112.4(b), 2 U.S.C. § 437(f). Second, the FEC has routinely approved the use of campaign funds for legal expenses in connection with investigations *prior* to the issuance of any indictment or regulatory enforcement action. In such cases, the FEC has relied on the description of the investigation provided by the requesting party as well as press reports regarding the investigation to determine whether the subject matter of the investigation pertained to the official conduct of a member of Congress or the actions of a candidate for federal office. See Advisory Opinions 1998-1, 1997-12.

Although the duration and ultimate result of the grand jury's investigation remains unknown, Representative Cunningham has already incurred substantial legal expenses in connection with both accommodating requests from the grand jury and responding to media allegations and attention surrounding the investigation. It is well established that federal officeholders are objects of heightened media attention as a direct result of their office. Thus, the FEC has permitted the use of campaign funds for legal expenses related to media allegations alone. See 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 need for Representative Cunningham to respond to allegations carried in the media (and the legal expenses resulting therefrom) simply "would not exist irrespective of the candidate's campaign or officeholder status." See Advisory Opinion 1997-12 (permitting use of campaign funds to pay for 100% of legal expenses related to media allegations that a Congressman improperly used his office to help a silent business partner).

Moreover, where allegations, as here, arise from the circumstances surrounding a representative's actions as an officeholder and candidate, campaign funds may be used to pay resulting legal expenses because such allegations are directly connected to a federal officeholder's official activities. Advisory Opinion 1997-12. The FEC has even permitted the use of campaign funds to respond to allegations involving conduct that, to a large extent, is only peripherally related to an officeholder's official duties. In Advisory Opinions 1996-24 and 1997-12, the FEC permitted use of campaign funds to pay legal expenses related to matters of marital status, compliance with local construction codes, veterans benefits eligibility, tax deductions and the business relations of a congressman with individuals convicted of federal crimes unrelated to his campaign or the conduct of his office. Thus, the Committee's request in this instance is by no means unprecedented; indeed, it is quite routine.

Accordingly, we request that the FEC promptly consider Representative Cunningham's request for an advisory opinion, so that the Committee may begin paying legal expenses related to the investigation.

Please feel free to contact me with any questions regarding this request.

Sincerely,



Kenneth Batson  
Treasurer  
Friends of Duke Cunningham

Duke, you may use campaign funds for legal expenses.

Duke, please donate the amount of my prior contribution to the NRCCC.

*We're going to miss your  
Responsible Leadership*

Please Mail to: Kenneth Batson  
Treasurer, Friends of Duke Cunningham  
PO Box 697  
San Marcos, CA 92079-0697

---

Duke, you may use campaign funds for legal expenses.

Duke, please donate the amount of my prior contribution to the NRCCC.

Please Mail to: Kenneth Batson  
Treasurer, Friends of Duke Cunningham  
PO Box 697  
San Marcos, CA 92079-0697

8/3/05  
DUKE - THANK YOU FOR BEING SUCH A  
GOOD AMERICAN CONGRESSMAN FOR  
SOUTHWEST DISTRICT. GOD BLESS  
YOU & YOUR FAMILY

Duke, you may use campaign funds for legal expenses.

Duke, please donate the amount of my prior contribution to the NRCCC.

Please Mail to: Kenneth Batson  
Treasurer, Friends of Duke Cunningham  
PO Box 697  
San Marcos, CA 92079-0697

*Wishing you the best of luck and health.*

9207940697 07



Duke, you may use campaign funds for legal expenses.

Duke, please donate the amount of my prior contribution to the NRCCC.

Please Mail to: Kenneth Batson  
Treasurer, Friends of Duke Cunningham  
PO Box 697  
San Marcos, CA 92079-0697

*and I am still  
very much "your friend"*

P.O. Box 697 • San Marcos, California • 92079

*Date: August 4, 2005*  
*uh, I know there's allegations were*  
*not true when I first heard about*  
*this. Good luck!*

Duke, you may use campaign funds for legal expenses.

Duke, please donate the amount of my prior contribution to the NRCCC.

Please Mail to:

Kenneth Batson  
Treasurer, Friends of Duke Cunningham  
PO Box 697  
San Marcos, CA 92079-0697

*Kenneth,*  
*Please give Duke*  
*my message above. Thank you!*

Duke, you may use campaign funds for legal expenses.

Duke, please donate the amount of my prior contribution to the NRCCC.

*Good Luck!*  
*Best Wishes*  
Please Mail to:

Kenneth Batson  
Treasurer, Friends of Duke Cunningham  
PO Box 697  
San Marcos, CA 92079-0697

Duke, you may use campaign funds for legal expenses.

Duke, please donate the amount of my prior contribution to the NRCCC.

Please Mail to: Kenneth Batson  
Treasurer, Friends of Duke Cunningham  
PO Box 697  
San Marcos, CA 92079-0697

I AM SO SORRY TO HEAR OF  
YOUR RECENT TROUBLES - GOD SPEED  
AND THANKS FOR YOUR SERVICE TO  
OUR COUNTRY

---

Duke, you may use campaign funds for legal expenses.

Duke, please donate the amount of my prior contribution to the NRCCC.

*Good Luck, Good Bless*

---

Please Mail to: Kenneth Batson  
Treasurer, Friends of Duke Cunningham  
PO Box 697  
San Marcos, CA 92079-0697

We'll miss your good work in Wash.  
Thanks for all you have done in the past

Duke, you may use campaign funds for legal expenses...

Duke, please donate the amount of my prior contribution to the NRCCC.

Please Mail to:

Kenneth Batson  
Treasurer, Friends of Duke Cunningham  
PO Box 697  
San Marcos, CA 92079-0697