

May 1, 2009

AO DRAFT COMMENT PROCEDURES

The Commission permits the submission of written public comments on draft advisory opinions when on the agenda for a Commission meeting.

DRAFT ADVISORY OPINION 2009-08 is available for public comments under this procedure. It was requested by Congressman Elton Gallegly, Elton Gallegly for Congress.

Draft Advisory Opinion 2009-08 is scheduled to be on the Commission's agenda for its public meeting of Thursday, May 7, 2009.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00pm noon (Eastern Time) on May 6, 2009.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

CONTACTS

Press inquiries: Judith Ingram (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2009-08, contact the Public Records Office at (202) 694-1120 or (800) 424-9530 or visit the Commission's website at www.fec.gov.

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

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Washington, DC 20463

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May 1, 2009

AGENDA ITEM
For Meeting of: 5-07-09

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
General Counsel

Rosemary C. Smith *RCR for RCS*
Associate General Counsel

Amy L. Rothstein *ALR*
Assistant General Counsel

Esther D. Heiden *EDH*
Attorney

Subject: Draft AO 2009-08 (Representative Gallegly)

SUBMITTED LATE

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 7, 2009.

Attachment

1 ADVISORY OPINION 2009-08

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3 The Honorable Elton Gallegly

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Member of Congress

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Elton Gallegly for Congress

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P.O. Box 940001

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Simi Valley, CA 93094-0001

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Dear Representative Gallegly:

DRAFT

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We are responding to your advisory opinion request on behalf of yourself and

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Elton Gallegly for Congress, concerning the application of the Federal Election

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Campaign Act of 1971, as amended (the "Act"), and Commission regulations, to the use

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of campaign funds to pay for enhanced security at your home.

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The Commission concludes that because the need for enhanced security at your

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home is due to threats to you and your wife stemming from your role as a Member of

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Congress and a candidate, the use of campaign funds to pay for such upgrades does not

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constitute personal use of campaign funds, and is permissible under the Act and

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Commission regulations.

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Background

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The facts presented in this advisory opinion are based on your letter received on

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April 10, 2009, and your email received on April 14, 2009, as well as telephone

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conversations with Commission attorneys.

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Representative Elton Gallegly is a Member of the U.S. House of Representatives

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from California's 24th District. Mrs. Janice Gallegly is Representative Gallegly's wife,

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and is also his longtime campaign manager. Mrs. Gallegly is prominent in the

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community for her role in Representative Gallegly's campaign. In October and

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November 2008, Representative Gallegly was running for re-election to the House of

1 Representatives. Elton Gallegly for Congress (the "Committee") was, and remains, his
2 principal campaign committee.

3 Twelve days before the November general election, on October 23, 2008, Mrs.
4 Gallegly was at her and the Congressman's personal residence in California. A man (the
5 "individual") approached Mrs. Gallegly at her home and claimed to be a gardener looking
6 for work. Mrs. Gallegly had never seen the individual before. Mrs. Gallegly told the
7 individual that she did not have any work for him, and asked him to leave her property.
8 The individual left the Gallegly's property.

9 Four days later, on October 27, 2008, Mrs. Gallegly found in her house mailbox a
10 hand-addressed, unstamped letter. The envelope was addressed "To: Elton and
11 republican [sic] party," and the letter was signed by the same individual who had
12 approached Mrs. Gallegly on her property, several days earlier, and demanded that the
13 individual be allowed to stay at the Gallegly residence "or anywhere filled with
14 republicans [sic] for a guaranteed win of office." The letter also referred to the incident
15 several days prior, in which the individual approached Mrs. Gallegly claiming to be a
16 gardener. Mrs. Gallegly felt threatened and contacted the local police department. The
17 police instructed the individual not to contact the Galleglys or go to their residence.

18 On November 7, 2008, the individual entered the Galleglys' property a third time.
19 This time, a neighbor spotted him and called 911. Mrs. Gallegly subsequently obtained a
20 Restraining Order and an Order to Stop Harassment against the individual.

21 The individual violated the terms of the Restraining Order by entering the
22 Galleglys' property yet again. Mrs. Gallegly called the police, who arrived and found the
23 individual hiding in the bushes near the front door of the Galleglys' home in the early

1 morning hours before daylight. The individual was arrested and convicted of violating
2 the Restraining Order.

3 The individual served thirty days in jail for violating the Restraining Order and
4 was released on probation. After his release, the individual violated the terms of his
5 probation and was arrested again. At that hearing, the judge set the individual's bail at
6 \$100,000, citing the risk the individual posed to the Congressman's and Mrs. Gallegly's
7 safety.

8 Representative Gallegly consulted the U.S. Capitol Police about the incidents with
9 the individual. The U.S. Capitol Police recommended various upgrades to Representative
10 Gallegly's home security system for the Congressman's and Mrs. Gallegly's safety. On
11 the basis of these recommendations, Representative Gallegly's home security provider
12 estimated that the security upgrades would cost between \$6,000 and \$7,500.

13 Representative Gallegly confirmed that the security upgrades would not involve any
14 structural improvements to, and are not intended to increase the value of, the Galleglys'
15 property.

16 ***Question Presented***

17 *May the Committee pay the costs associated with the security upgrades with*
18 *campaign funds?*

19 ***Legal Analysis and Conclusions***

20 Yes, the Committee may use campaign contributions to pay the costs associated
21 with the security upgrades because these costs would not constitute personal use of
22 campaign funds under 2 U.S.C. 439a(b).

1 The Act identifies six categories of permissible uses of contributions accepted by
2 a Federal candidate. They are: (1) otherwise authorized expenditures in connection with
3 the candidate's campaign for Federal office; (2) ordinary and necessary expenses
4 incurred in connection with the duties of the individual as a holder of Federal office; (3)
5 contributions to organizations described in 26 U.S.C. 170(c); (4) transfers, without
6 limitation, to national, State, or local political party committees; (5) donations to State
7 and local candidates subject to the provisions of State law; and (6) any other lawful
8 purpose not prohibited by 2 U.S.C. 439a(b). 2 U.S.C. 439a(a); *see also* 11 CFR
9 113.2(a)-(e).

10 Under 2 U.S.C. 439a(b), contributions accepted by a candidate may not be
11 converted to "personal use" by any person. 2 U.S.C. 439a(b)(1); 11 CFR 113.2(e). The
12 Act specifies that conversion to personal use occurs when a contribution or amount is
13 used "to fulfill any commitment, obligation, or expense of a person that would exist
14 irrespective of the candidate's election campaign or individual's duties as a holder of
15 Federal office." 2 U.S.C. 439a(b)(2); *see also* 11 CFR 113.1(g).

16 The Act and Commission regulations provide a non-exhaustive list of items that
17 would constitute personal use, none of which applies here. *See* 2 U.S.C. 439a(b)(2)(A)-
18 (I); 11 CFR 113.1(g)(1)(i)(A)-(J). For items not on this list, the Commission makes a
19 determination on a case-by-case basis whether an expense would fall within the definition
20 of "personal use." 11 CFR 113.1(g)(1)(ii). This list does not include payments for home
21 security systems. The Commission has not previously considered whether payments for
22 a home security system would constitute personal use under the Act and Commission
23 regulations.

1 In this case, neither Representative Gallegly nor his wife knew or had any contact
2 with the individual until just before the November 4, 2008 election in which
3 Representative Gallegly was a candidate. The October 27, 2008 letter written by the
4 individual was addressed "To: Elton and republican [sic] party," and contained numerous
5 additional references to the Republican and Democratic parties, as well as the election.
6 The content and timing of the letter strongly suggest that it was the Congressman's public
7 role as a candidate in the November 4, 2008 election, and/or his activities as a Member of
8 Congress, that resulted in this action by the individual. The individual's actions therefore
9 would not have occurred had Representative Gallegly not been a Member of Congress or
10 a candidate for re-election. Furthermore, the proposed security upgrades were
11 recommended by the U.S. Capitol Police specifically because of the continuing threat
12 posed by this individual.

13 The Commission has long recognized that if a candidate "can reasonably show
14 that the expenses at issue resulted from campaign or officeholder activities, the
15 Commission will not consider the use to be personal use." Explanation and Justification
16 for Final Rules on Personal Use of Campaign Funds, 60 FR 7862, 67 (Feb. 9, 1995).
17 Because the on-going harassment has occurred as a result of Representative Gallegly's
18 re-election campaign and public position as a Member of Congress, the Commission
19 concludes that the need for the proposed upgrades to the Congressman's security system
20 would not exist irrespective of the Congressman's campaign or duties as a Federal
21 officeholder. Therefore, the use of campaign funds to pay for these security system
22 upgrades would not constitute personal use of campaign contributions, and would not be
23 prohibited by the Act or Commission regulations. 2 U.S.C. 439a(b).

1 This response constitutes an advisory opinion concerning the application of the
2 Act and Commission regulations to the specific transaction or activity set forth in your
3 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
4 of the facts or assumptions presented, and such facts or assumptions are material to a
5 conclusion presented in this advisory opinion, then the requestor may not rely on that
6 conclusion as support for its proposed activity. Any person involved in any specific
7 transaction or activity which is indistinguishable in all its material aspects from the
8 transaction or activity with respect to which this advisory opinion is rendered may rely on
9 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or
10 conclusions in this advisory opinion may be affected by subsequent developments in the
11 law including, but not limited to, statutes, regulations, advisory opinions and case law.

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On behalf of the Commission,

Steven T. Walther
Chairman