



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 1, 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2011-05

The Honorable Lee Terry
Member of Congress
Lee Terry for Congress
P.O. Box 540098
Omaha, NE 68154

Dear Representative Terry:

We are responding to your advisory opinion request concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the use of campaign funds to pay for enhanced security at your home.

The Commission concludes that because the need for enhanced security at your home is due to threats to you stemming from your role as a Member of Congress and a candidate for Federal office, the use of campaign funds to pay for such upgrades does not constitute personal use of campaign funds, and is permissible under the Act and Commission regulations.

Background

The facts presented in this advisory opinion are based on your letter received on March 16, 2011.

Representative Lee Terry is a Member of the U.S. House of Representatives from Nebraska's 2nd Congressional District. Lee Terry for Congress (the "Committee") was, and remains, his principal campaign committee. Representative Terry was both a Federal officeholder and a candidate for re-election to the House of Representatives when the events giving rise to this request occurred.

In October 2008, an individual reportedly became angry at receiving campaign literature from Representative Terry and caused several disturbances at Representative Terry's congressional office. After Representative Terry's congressional staff informed the individual that he should register his complaint with Representative Terry's campaign

staff, the individual stated that he knew where Representative Terry's residence was and that he would go to the residence to voice his anger. As a result of this threat, the local Sheriff's office increased its patrol presence in Representative Terry's neighborhood.

On December 31, 2008, the individual left voicemails at the Nebraska Governor's office indicating that he had "a right to show up at" Representative Terry's residence whenever he desired to do so. Representative Terry altered his New Year's Eve plans in response to this threat in order to stay home with his three young sons. The local Sheriff's office again increased its patrol presence in Representative Terry's neighborhood.

On April 22, 2009, in the middle of the night, a person left at the front step of Representative Terry's residence campaign literature from Representative Terry's 2008 campaign. This literature was addressed to the individual. In an investigative interview with law enforcement, an acquaintance of the individual stated that the individual "is striving against the abuse of power by public officials."¹

The individual was later charged with two counts of stalking and nine counts of intimidation by telephone. The victims were a reporter who had reported about the April 22 incident at Representative Terry's home and the local Sheriff. During the proceedings, the trial judge increased the bond for the individual to \$1 million because of the individual's continuing illegal harassing conduct. The individual pled guilty to two counts of intimidation by telephone and was incarcerated from March 18, 2010 until August 4, 2010. The individual once again resides in Representative Terry's congressional district.

Since the individual's release from custody, he has been observed by law enforcement, on several occasions, driving past Representative Terry's congressional office and through Representative Terry's neighborhood.

Representative Terry consulted the U.S. Capitol Police about the incidents with the individual. The U.S. Capitol Police recommended the installation of various components of a security system, including CCTV video surveillance, at Representative Terry's home. The local Sheriff's office also recommended the installation of a security system that includes video surveillance. While Representative Terry has previously installed a security alarm system at his home, he now wants to install an exterior CCTV system, the estimated cost of which will not exceed \$5000. Representative Terry confirmed that the security upgrades will not result in any structural improvements to, or increase the value of, Representative Terry's property.

¹ The individual has also previously been found guilty and sentenced for stalking the Nebraska Attorney General.

Question Presented

May Representative Terry use campaign contributions to offset the costs of installing the recommended additional security measures to his home?

Legal Analysis and Conclusions

Yes, Representative Terry may use campaign contributions to offset the costs of installing the recommended additional security measures to his home because these costs would not constitute personal use of campaign funds under 2 U.S.C. 439a(b).

The Act identifies six categories of permissible uses of contributions accepted by a Federal candidate. They are: (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); (4) transfers, without limitation, to national, State, or local political party committees; (5) donations to State and local candidates subject to the provisions of State law; and (6) any other lawful purpose not prohibited by 2 U.S.C. 439a(b). 2 U.S.C. 439a(a); *see also* 11 CFR 113.2(a)-(e).

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

The Act and Commission regulations provide a non-exhaustive list of items that would constitute personal use, none of which applies here. *See* 2 U.S.C. 439a(b)(2)(A)-(I); 11 CFR 113.1(g)(1)(i)(A)-(J). For items not on this list, such as payments for home security systems, the Commission determines on a case-by-case basis whether an expense would fall within the definition of "personal use." 11 CFR 113.1(g)(1)(ii). The Commission has long recognized that if a candidate "can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use." Explanation and Justification for Final Rules on Personal Use of Campaign Funds, 60 FR 7862, 7867 (Feb. 9, 1995).

The Commission has previously concluded that payments for a home security system under circumstances very similar to those presented here do not constitute personal use under the Act and Commission regulations. Advisory Opinion 2009-08 (Gallegly) concerned Representative Gallegly, an officeholder and candidate for Federal office, whose home was approached on several occasions by an individual who may have constituted an ongoing threat to the safety of Representative Gallegly and members of Representative Gallegly's family. The facts suggested that the individual was motivated

by Representative Gallegly's public role as a candidate and activities as a Member of Congress. The proposed security upgrades to Representative Gallegly's home were recommended by the U.S. Capitol Police specifically because of the continuing threat posed by this individual. Additionally, the recommended security upgrades, which were estimated to cost slightly more than those proposed by Representative Terry here, would not involve any structural improvements to, and were not intended to increase the value of, the Congressman's home. Based on these facts, the Commission concluded that the individual's actions would not have occurred had Representative Gallegly not been a Member of Congress or a candidate for re-election, and that the expenses for the proposed upgrades to the Congressman's security system would not exist irrespective of the Congressman's campaign or duties as a Federal officeholder.

In the facts presented in this request, the individual appears to be similarly motivated by both Representative Terry's campaign and his role as a Member of Congress. The individual reportedly became angry initially at receiving campaign literature from Representative Terry. The individual has left campaign literature addressed to him at the front step of Representative Terry's residence. A law enforcement interview indicates that the individual "is striving against the abuse of power by public officials." The individual has caused several disturbances and engaged in behavior related to Representative Terry's home that the local Sheriff considers to be a threat. The individual appears to have a history of stalking, harassment, and threats and, now that he is no longer incarcerated, may continue to pose a risk to Representative Terry at his family home. The U.S. Capitol Police recommend additional security measures, including the installation of CCTV video surveillance, at Representative Terry's home. The U.S. Capitol Police notes that its recommendations are in accordance with "standard countermeasures." The proposed security upgrades would not result in any structural improvements to, and are not intended to increase the value of, Representative Terry's property.

Based on these facts, the Commission concludes that the individual's actions would not have occurred had Representative Terry not been a Member of Congress or a candidate for re-election. The expenses for the proposed upgrades to the Congressman's security system would not exist irrespective of the Congressman's campaign or duties as a Federal officeholder. Therefore, the use of campaign funds to pay for these security system upgrades would not constitute personal use of campaign contributions, and would not be prohibited by the Act or Commission regulations. 2 U.S.C. 439a(b).

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 requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or

conclusions in this advisory opinion may be affected by subsequent developments in the law, including, but not limited to, statutes, regulations, advisory opinions, and case law. The cited advisory opinion is available on the Commission's website, www.fec.gov, or directly from the Commission's Advisory Opinion searchable database at <http://saos.nictusa.com/saos/searchao>.

On behalf of the Commission,

(signed)
Cynthia L. Bauerly
Chair