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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 13-26
AGENDA ITEM
For meeting of July 25, 2013

July 18, 2013

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by AN*
Deputy General Counsel

Adav Noti *AN*
Acting Associate General Counsel

Amy L. Rothstein *ALR*
Assistant General Counsel

Neven F. Stipanovic *NFS*
Attorney

Subject: Draft AO 2013-05 (Gallegly)

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on July 24, 2013.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2013-05
2
3 Representative Elton Gallegly
4 P.O. Box 940001
5 Simi Valley, CA 93094
6

DRAFT

7 Dear Representative Gallegly:

8 We are responding to your advisory opinion request concerning the application of
9 the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission
10 regulations to your use of campaign funds to pay for the temporary storage of your
11 officeholder and campaign materials after your retirement from federal office. The
12 Commission concludes that you may use campaign funds to pay these expenses because
13 they are ordinary and necessary expenses incurred in connection with your duties as a
14 federal officeholder.

15 ***Background***

16 The facts presented in this advisory opinion are based on your letter received on
17 June 10, 2013, email received on June 26, telephone conversations with Commission
18 staff, and information publicly available on the Commission’s website.

19 In January 2013, you retired from Congress after serving 26 years as a member of
20 the U.S. House of Representatives. Your principal campaign committee no longer
21 accepts contributions, owes no debts, and recently reported a cash-on-hand balance of
22 \$528,257.¹

23 You have hundreds of boxes of officeholder and campaign documents in storage
24 from your years in Congress. Most of these materials will eventually be sent to

¹ See Report of Receipts and Disbursements by Gallegly for Congress (July 2, 2013),
<http://images.nictusa.com/pdf/908/13963184908/13963184908.pdf>.

1 California Lutheran University for archiving. To ensure that the materials are properly
2 identified for archiving, you and others have been reviewing them since your retirement,
3 but your review has been interrupted for health reasons. To date, you have reviewed only
4 about half of the material. Also in storage are a few personal items that will be archived
5 from your Washington, D.C. office, as well as campaign furniture, books, and
6 memorabilia that you intend to give away or otherwise dispose of. You have been paying
7 the usual and normal charge of approximately \$300 per month to store the materials in a
8 commercial, public storage facility and will continue to do so. You plan to dispose of all
9 of these items by the end of calendar year 2013.

10 ***Question Presented***

11 *May you use campaign funds to pay costs associated with the temporary storage*
12 *of officeholder and campaign materials pending their final disposition after your*
13 *retirement from federal office?*

14 ***Legal Analysis and Conclusion***

15
16 Yes, you may use campaign funds to pay costs associated with the temporary
17 storage of officeholder and campaign materials pending their final disposition after your
18 retirement from federal office. The cost of such temporary storage is an ordinary and
19 necessary expense incurred in connection with your duties as a holder of federal office
20 and is not personal use of campaign funds.

21 The Act identifies six categories of permissible uses of contributions accepted by
22 a federal candidate. 2 U.S.C. § 439a(a); *see also* 11 C.F.R. Part 113. These permissible
23 uses of campaign funds include paying “ordinary and necessary expenses incurred in
24 connection with duties of the individual as a holder of Federal office,” as well as “any

1 other lawful purpose,” but not conversion to “personal use.” 2 U.S.C. § 439a(a)(2), (6),
2 (b); *see also* 11 C.F.R. § 113.2(a), (e). Conversion to personal use occurs when funds in
3 a campaign account are used “to fulfill any commitment, obligation or expense . . . that
4 would exist irrespective of the candidate’s election campaign or . . . duties as a holder of
5 Federal office.” 2 U.S.C. § 439a(b)(2); *see also* 11 C.F.R. § 113.1(g).

6 The Commission’s regulations provide that the costs of winding down the office
7 of a former federal officeholder for a period of six months after he or she leaves office
8 are ordinary and necessary expenses. 11 C.F.R. § 113.2(a)(2). This six-month winding
9 down period “acts as a safe harbor” and is intended “to ensure that former officeholders
10 have ample time to close down their offices.” *See* Expenditures; Reports by Political
11 Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7873 (Feb. 9, 1995).
12 It “does not preclude a former officeholder who can demonstrate that he or she has
13 incurred ordinary and necessary winding down expenses more than six months after
14 leaving office from using campaign funds to pay those expenses.” *Id.* Such winding-
15 down costs include the “necessary administrative costs” of terminating a campaign or
16 congressional office, such as office space rental, staff salaries and office supplies. *See*
17 11 C.F.R. §§ 110.1(b)(3)(ii), 116.1(a).² The Commission has previously concluded that
18 the cost of archiving and storing campaign papers, files, and other materials is an
19 ordinary and necessary expense incurred by a former Member of Congress in winding
20 down campaign activity. Advisory Opinion 1993-06 (Panetta); *see also* Advisory
21 Opinion 1996-14 (de la Garza) (authorizing use of campaign funds to pay costs of

² *See also* 11 C.F.R. §§ 9004.11(a) (winding down costs for candidates eligible for public funding include necessary administrative costs associated with ending a campaign, such as office space rental, staff salaries, and office supplies), 9034.11(a) (same), 9004.9(a)(4) (winding down costs for candidates eligible for public funding include storage and certain other expenses), 9034.5(b)(2) (same).

1 winding down federal office, including costs to ship items from congressional office to
2 home state).

3 Like the storage and shipping expenses in these earlier advisory opinions,
4 expenses incurred to store your officeholder and campaign materials in a commercial,
5 public storage facility pending their final disposition is an ordinary and necessary
6 expense incurred in winding down your campaign and congressional offices. Because
7 these expenses would not exist irrespective of your election campaigns and your duties as
8 a federal officeholder, the use of campaign funds to pay them does not constitute personal
9 use. And the facts that you have provided regarding the duration of your time in
10 Congress and the attendant length of your archival review indicate that the cost to store
11 your officeholder and campaign materials for up to one year after you retired from federal
12 office is an ordinary and necessary winding-down expense of a federal officeholder with
13 your extensive tenure. Accordingly, the Commission concludes that your use of
14 campaign funds to pay costs associated with the temporary storage of these materials
15 would not be prohibited by the Act or Commission regulations.³

16 This response constitutes an advisory opinion concerning the application of the
17 Act and Commission regulations to the specific transaction or activity set forth in your
18 request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in
19 any of the facts or assumptions presented, and such facts or assumptions are material to a
20 conclusion presented in this advisory opinion, then the requestor may not rely on that
21 conclusion as support for its proposed activity. Any person involved in any specific

³ Because your use of campaign funds to pay these storage expenses is otherwise lawful and does not constitute personal use, it is also permissible under 2 U.S.C. § 439a(a)(6) and 11 C.F.R. § 113.2(e).

1 transaction or activity which is indistinguishable in all its material aspects from the
2 transaction or activity with respect to which this advisory opinion is rendered may rely on
3 this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note that the analysis or
4 conclusions in this advisory opinion may be affected by subsequent developments in the
5 law including, but not limited to, statutes, regulations, advisory opinions, and case law.
6 The cited advisory opinions are available on the Commission's Web site at www.fec.gov,
7 or directly from the Commission's Advisory Opinion searchable database at
8 <http://www.fec.gov/searchao>.

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On behalf of the Commission,

Ellen L. Weintraub
Chair