



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 25, 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2013-05

Representative Elton Gallegly
P.O. Box 940001
Simi Valley, CA 93094

Dear Representative Gallegly:

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 your use of campaign funds to pay for the temporary storage of your officeholder and campaign materials after your retirement from federal office. The Commission concludes that you may use campaign funds to pay these expenses because they are ordinary and necessary expenses incurred in connection with your duties as a federal officeholder.

Background

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

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

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

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

Question Presented

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

Legal Analysis and Conclusion

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

The Act identifies six categories of permissible uses of contributions accepted by a federal candidate. 2 U.S.C. § 439a(a); *see also* 11 C.F.R. Part 113. These permissible uses of campaign funds include paying “ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office,” as well as “any other lawful purpose,” but not conversion to “personal use.” 2 U.S.C. § 439a(a)(2), (6), (b); *see also* 11 C.F.R. § 113.2(a), (e). Conversion to personal use occurs when funds in a campaign account are used “to fulfill any commitment, obligation or expense . . . that would exist irrespective of the candidate’s election campaign or . . . duties as a holder of Federal office.” 2 U.S.C. § 439a(b)(2); *see also* 11 C.F.R. § 113.1(g).

The Commission’s regulations provide that the costs of winding down the office of a former federal officeholder for a period of six months after he or she leaves office are ordinary and necessary expenses. 11 C.F.R. § 113.2(a)(2). This six-month winding down period “acts as a safe harbor” and is intended “to ensure that former officeholders have ample time to close down their offices.” *See Expenditures; Reports by Political Committees; Personal Use of Campaign Funds*, 60 Fed. Reg. 7862, 7873 (Feb. 9, 1995). It “does not preclude a former officeholder who can demonstrate that he or she has incurred ordinary and necessary winding down expenses more than six months after

leaving office from using campaign funds to pay those expenses.” *Id.* Such winding-down costs include the “necessary administrative costs” of terminating a campaign or congressional office, such as office space rental, staff salaries and office supplies. *See* 11 C.F.R. §§ 110.1(b)(3)(ii), 116.1(a).² The Commission has previously concluded that the cost of archiving and storing campaign papers, files, and other materials is an ordinary and necessary expense incurred by a former Member of Congress in winding down campaign activity. Advisory Opinion 1993-06 (Panetta); *see also* Advisory Opinion 1996-14 (de la Garza) (authorizing use of campaign funds to pay costs of winding down federal office, including costs to ship items from congressional office to home state).

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

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.

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).

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).

The cited advisory opinions are available on the Commission's Web site at www.fec.gov, or directly from the Commission's Advisory Opinion searchable database at <http://www.fec.gov/searchao>.

On behalf of the Commission,

(signed)
Ellen L. Weintraub
Chair