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June 5, 2019

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Lisa J. Stevenson, Esq.
Acting General Counsel
Office of General Counsel
Federal Election Commission
1050 First Street, N.E.
Washington, D.C. 20463

Re: Request for an Advisory Opinion Regarding Use of Campaign Funds for Childcare Expenses

Dear Ms. Stevenson:

On behalf of Mary Jennings (“MJ”) Hegar and her campaign committee, MJ for Texas, we write to request an advisory opinion regarding the use of campaign funds to pay for childcare expenses incurred by a candidate while campaigning for federal office.

BACKGROUND

Ms. Hegar is a candidate in the 2020 election for U.S. Senate in Texas; MJ for Texas is her authorized campaign committee.¹ Ms. Hegar has two young children, ages 2 and 4. Ms. Hegar has enjoyed a successful career in military service and as an author and public speaker. Immediately prior to running for Senate, she and her husband both worked full time. As a result, their two children were enrolled in full-time daycare.

After announcing her candidacy for U.S. Senate, Ms. Hegar left her job in order to devote her full time to her campaign. She intends to dedicate the vast majority of her time to her duties as a candidate, and thus will not be available to provide care for her children on a full-time basis without the assistance of daycare services. In addition, due to his full-time job, Ms. Hegar’s spouse cannot provide care for their children while Ms. Hegar campaigns. Although there may be some instances where childcare needs arise due to obligations other than the campaign, such as Ms. Hegar’s personal or non-campaign professional activities, she anticipates that the vast majority of her time away from her family in the coming months will be spent engaged in campaign activities.

In order to devote the necessary time and effort to her candidacy, Ms. Hegar will likely be required to keep her children in full-time daycare. However, Ms. Hegar cannot rely on personal

¹ Mary Jennings MJ Hegar, FEC Form 2 (filed Apr. 24, 2019) <http://docquery.fec.gov/cgi-bin/forms/S0TX00233/1328595/>.

wealth to finance her campaign. In addition, under federal law, Ms. Hegar will not be permitted to draw a salary from her campaign for her work as a candidate until December of 2019.²

Ms. Hegar and MJ for Texas propose to use campaign funds to pay for Ms. Hegar's minor children to enroll in full-time daycare. If Ms. Hegar spends any time on personal matters or on professional work unrelated to the campaign while her children are in daycare, she will track that time and will periodically reimburse MJ for Texas on a proportional basis for the amount of daycare time that is used that is not attributable to her campaign to become the next Senator from the state of Texas.

QUESTION PRESENTED

May MJ Hegar and MJ for Texas use campaign funds to pay a portion of full-time daycare expenses which are incurred due to her work on her campaign?

ANALYSIS

The Act gives federal candidates broad authority to use campaign funds to “defray[] expenses in connection with a campaign for federal office” or for any other “authorized expenditures in connection with the campaign for [f]ederal office.”³ However, campaign funds may not be converted to any “personal use.”⁴ “Personal use” is defined as the use of campaign funds “. . . to fulfill any commitment, obligation, or expense of a person that would exist *irrespective of the candidate's election campaign . . .*” or duties as a federal officeholder.⁵ Commission regulations provide a list of expenses, such as household food items and clothing, that are considered *per se* personal use. If an expense is not on that list, the FEC considers the permissibility of the use of campaign funds for that purpose on a case-by-case basis.⁶ Childcare expenses are not identified in Commission regulations as *per se* personal use; the FEC has considered the use of campaign funds for childcare costs on a case by case basis.

In prior Advisory Opinions, the Commission has recognized that campaigning for federal office can cause unique problems for candidates with young children, and has found that the use of

² Although Commission regulations to permit a candidate's principal campaign committee to make salary payments to the candidate, a candidate cannot receive a salary “before the filing deadline for access to the primary election ballot for the Federal office that the candidate seeks, as determined by State law...” 11 C.F.R. § 113.1(g)(1)(i)(I). In Texas, the deadline for access to the primary election ballot for U.S. Senate is 6 p.m. on the second Monday in December of an odd-numbered year. Tex. Elec. Code Ann. § 172.023(a). For the 2020 Texas Senate primary, the ballot access deadline will be on December 9, 2019. Note that Ms. Hegar has not determined whether or not she will draw a salary from MJ for Texas when she is legally able to do so.

³ 52 U.S.C. § 30114(a)(1); 11 C.F.R. § 113.2.

⁴ 52 U.S.C. § 30114(b).

⁵ *Id.* § 30114(b)(2) (emphasis added).

⁶ 11 C.F.R. § 113.1(g)(1).

campaign funds to cover childcare expenses is *not* personal use so long as such expenses are incurred as a direct result of campaign activity and would therefore not exist irrespective of the campaign.⁷ In 1995, the FEC approved the use of campaign funds for occasional childcare costs where both a candidate and his wife were required to attend campaign events.⁸ The Commission has also approved the use of campaign funds to pay travel expenses for young children, where both the candidate and the candidate's spouse would be travelling for campaign purposes and the children needed to accompany them due to their young age.⁹

Most recently, the Commission approved the use campaign funds to pay for full time, rather than occasional, childcare costs. In that instance, prior to her campaign, Congressional candidate Liuba Grechen Shirley worked from home as a consultant and cared for her children full time.¹⁰ Due to the demands of her candidacy, Ms. Shirley was required to give up her consulting work and hire a care giver to care for her children while she engaged in campaign activities.¹¹ The Commission concluded that the amount of childcare required was not relevant to the legal question, which was whether the childcare expenses would exist "irrespective of the candidate's campaign or officeholder duties."¹² The Commission found that to the extent Ms. Shirley's childcare expenses were "incurred as a direct result of campaign activity," these expenses would not have existed irrespective of the campaign, and could permissibly be paid with campaign funds.¹³

Ms. Hegar's situation differs from Ms. Shirley's in only one regard; prior to her candidacy, Ms. Hegar worked full time. The fact that Ms. Hegar's previous work did not allow her to provide full-time care for her children should not impact the relevant question: whether the childcare expenses she incurs while engaged in campaign activities would exist irrespective of her candidacy.¹⁴ They would not. Although she may incur some childcare obligations that are unrelated to her candidacy, the vast majority of Ms. Hegar's time away from her family will be spent engaged in campaign activity. If she were not campaigning during that time, the childcare expenses would not be necessary. Ms. Hegar will reimburse her campaign on a proportional basis for any use of her children's daycare that is not campaign-related. She should not be prohibited from using campaign funds to pay for childcare expenses that are a direct result of her campaign activity just because her prior employment also necessitated full-time childcare.

⁷ See FEC Adv. Op. 2018-06 (Liuba for Congress); 1995-42 (McCrery).

⁸ FEC Adv. Op. 1995-42 (McCrery).

⁹ FEC Adv. Ops. 1995-20 (Roemer); 2005-09 (Dodd).

¹⁰ FEC Adv. Op. 2018-06 (Liuba for Congress).

¹¹ FEC Adv. Op. 2018-06 (Liuba for Congress). The candidate's husband also worked full time and was therefore unable to provide childcare.

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ See *id.*

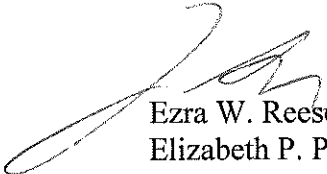
Lisa J. Stevenson, Esq.
June 5, 2019
Page 4

The time and travel demands of federal candidacy place a unique burden on the parents of young children. Childcare expenses differ from the types of living expenses that have been deemed “personal use,” such as household food, clothing, and rent or mortgage payments.¹⁵ A candidate’s obligation to pay those expenses is not related to the amount of time or effort spent running for federal office, and would remain even if the campaign ceased. In contrast, the need to pay for childcare while campaigning is a direct result of the candidate’s absence from the home due to campaign activities. These expenses would not exist irrespective of the campaign, and are not personal use. A contrary result, while leaving in place the Commission’s previous rulings, would treat candidates differently based entirely on whether or not they chose to work outside the home prior to their candidacy.

CONCLUSION

We respectfully request that Ms. Hegar’s campaign committee be permitted to pay for the portion of full-time daycare costs incurred while Ms. Hegar is engaged in campaign activities.

Very truly yours,



Ezra W. Reese
Elizabeth P. Poston

Counsel to Mary Jennings (“MJ”) Hegar & MJ for Texas

¹⁵ 11 C.F.R. § 113.1(g)(1).