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By Office of the Commission Secretary at 7:27 pm, Jul 24, 2019



FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 19-31-A1
AGENDA ITEM
For meeting of July 25, 2019
SUBMITTED LATE

July 24, 2019

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS*
Acting General Counsel

Neven F. Stipanovic *NFS*
Acting Associate General Counsel

Robert M. Knop *RMK*
Acting Assistant General Counsel

Cheryl Hemsley *CAFH by RMK*
Attorney

Subject: Draft AO 2019-13 (Mary Jennings Hegar & MJ for Texas) Revised Draft A

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 9:00 am (Eastern Time) on July 25, 2019.

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 <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2019-13
2
3 Ezra W. Reese, Esq.
4 Elizabeth P. Poston, Esq.
5 Perkins Coie LLP
6 700 13th Street, NW, Suite 600
7 Washington, D.C. 20005-3960
8

REVISED DRAFT A

9 Dear Mr. Reese and Ms. Poston:

10 We are responding to your request on behalf of Mary Jennings (“MJ”) Hegar and
11 her principal campaign committee, MJ for Texas (the “Committee”), regarding whether
12 the Federal Election Campaign Act of 52 U.S.C. §§ 30101-45 (“the Act”) and
13 Commission regulations permit the Committee to use campaign funds to pay for
14 childcare expenses incurred during Ms. Hegar’s candidacy. The Commission concludes
15 that the Committee may use campaign funds to pay for the childcare expenses proposed
16 in the request that are the direct result of campaign activity and thus would not exist
17 irrespective of Ms. Hegar’s campaign.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received on
20 June 5, 2019.

21 Ms. Hegar is a candidate in the 2020 election for U.S. Senate in Texas, and MJ for
22 Texas is her authorized campaign committee.¹ Advisory Opinion Request at AOR001.

¹ Commission records indicate that Ms. Hegar filed her current Statement of Candidacy on April 24, 2019, and that MJ for Texas filed its current Statement of Organization on April 23, 2019. *See* Mary Jennings “MJ” Hegar, Statement of Candidacy, FEC Form 2 (Apr. 24, 2019), <https://docquery.fec.gov/pdf/625/201904249149584625/201904249149584625.pdf>; MJ for Texas, Statement of Organization, FEC Form 1 (Apr. 23, 2019), <https://docquery.fec.gov/pdf/362/201904239149583362/201904239149583362.pdf>.

1 Before becoming a candidate for federal office, Ms. Hegar had a career in military
2 service and as an author and public speaker. *Id.* Ms. Hegar and her husband both worked
3 full time immediately prior to Ms. Hegar’s Senate campaign. *Id.* Their two children,
4 who are ages 2 and 4, were enrolled in full-time daycare. *Id.*

5 After Ms. Hegar launched her candidacy, she left her job to work full time on her
6 campaign. *Id.* As a result, Ms. Hegar is unable to provide full-time care for her children.
7 *Id.* Ms. Hegar’s husband also cannot provide full-time care for their children while his
8 wife works full-time on the campaign due to his full-time job.² *Id.* Accordingly, the
9 Committee proposes to use campaign funds to pay for full-time daycare for the children
10 while Ms. Hegar works full-time on her campaign. AOR002. Ms. Hegar proposes to
11 reimburse the Committee for the costs associated with any time she may spend on matters
12 unrelated to the campaign while the children are in full-time daycare. *Id.*

13 ***Question Presented***

14 *May the Committee use campaign funds to pay for the childcare expenses*
15 *proposed in the request?*

16 ***Legal Analysis and Conclusion***

17 Yes, the Committee may use campaign funds to pay for the childcare expenses
18 described in the request during the pendency of Ms. Hegar’s campaign.

19 Under the Act, a candidate’s authorized committee may use its funds for several
20 specific purposes, including “otherwise authorized expenditures in connection with the

² The request noted that Ms. Hegar may choose to draw a campaign salary at a later date, under 11 C.F.R. § 113.1(g)(1)(i)(I). However, because the Committee is not currently paying a salary to Ms. Hegar, the Commission does not address whether a future decision by the Committee to pay the candidate a salary would alter the Commission’s conclusion in this advisory opinion.

1 campaign for Federal office of the candidate.” U.S.C. § 30114(a)(1). However, an
2 authorized committee may not convert campaign funds to “personal use.” *See* 52 U.S.C.
3 § 30114(b); 11 C.F.R. § 113.1(g)(1)(ii). “Conversion to personal use” is defined as the
4 use of campaign funds “to fulfill any commitment, obligation, or expense of a person that
5 would exist irrespective of the candidate's election campaign.” 52 U.S.C. § 30114(b)(2);
6 11 C.F.R. § 113.1(g).

7 The Act and Commission regulations provide a non-exhaustive list of expenses
8 that, when paid using campaign funds, constitute *per se* conversion to personal use. 52
9 U.S.C. § 30114(b)(2); 11 CFR § 113.1(g)(1)(i). For expenses not listed, the Commission
10 determines on a case-by-case basis whether the expense would exist irrespective of the
11 candidate’s campaign. 11 CFR § 113.1(g)(1)(ii). If the expense would exist irrespective
12 of the candidate’s campaign, then the use of campaign funds to pay the expense
13 constitutes conversion to personal use. *Id.* If the expense would not exist irrespective of
14 the candidate’s campaign, then the use of campaign funds to pay the expense does not
15 constitute conversion to personal use and is permissible. *Id.*

16 The Act and Commission regulations do not explicitly reference childcare
17 expenses. Therefore, the Commission must evaluate whether such expenses would exist
18 irrespective of the candidate’s campaign to determine whether the use of campaign funds
19 to pay them constitutes conversion to personal use. *Id.*

20 In previous advisory opinions, the Commission has considered whether campaign
21 funds may be used to pay for certain childcare expenses. In Advisory Opinion 2018-06
22 (Liuba for Congress), a federal candidate gave up her in-home consulting work and hired
23 a caregiver for her children in order to fulfill her campaign responsibilities. Advisory

1 Opinion 2018-06 (Liuba for Congress) at 1-2. The Commission concluded that, under 11
2 C.F.R. § 113.1(g), the candidate could use campaign funds to pay for such care to the
3 extent that the expenses were a “direct result of campaign activity,” because such
4 expenses would not have existed irrespective of the campaign. Advisory Opinion 2018-
5 06 (Liuba for Congress) at 3. Similarly, in Advisory Opinion 1995-42 (McCrery), the
6 Commission concluded it was permissible for a candidate to use campaign funds to pay
7 for occasional childcare costs because such expenses would have resulted only from
8 campaign activity and would not otherwise exist. Advisory Opinion 1995-42 (McCrery)
9 at 2.

10 The Commission’s reasoning and conclusions in Advisory Opinion 2018-06
11 (Liuba for Congress) and Advisory Opinion 1995-42 (McCrery) are equally relevant
12 here. The request states that the vast majority of Ms. Hegar’s time away from her family
13 will relate to campaign activity and, accordingly, she will incur expenses for childcare
14 during that time. As in Advisory Opinion 2018-06 (Liuba for Congress) and Advisory
15 Opinion 1995-42 (McCrery), the Commission concludes that the expenses in Ms. Hegar’s
16 request, to the extent they are a direct result of campaign activity, would not exist
17 irrespective of her campaign and, therefore, can be paid with campaign funds. *See* 52
18 U.S.C. § 30114(a)(1), (b); 11 C.F.R. § 113.1(g). The Commission also concludes that
19 Ms. Hegar’s proposal to reimburse the campaign for childcare costs incurred at times she
20 is not campaigning is an appropriate way to ensure that campaign funds are used only for
21 activities that directly result from campaigning.

22 This response constitutes an advisory opinion concerning the application of the
23 Act and Commission regulations to the specific transaction or activity set forth in your

1 request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change
2 in any of the facts or assumptions presented, and such facts or assumptions are material to
3 a conclusion presented in this advisory opinion, then the requestor may not rely on that
4 conclusion as support for its proposed activity. Any person involved in any specific
5 transaction or activity which is indistinguishable in all its material aspects from the
6 transaction or activity with respect to which this advisory opinion is rendered may rely on
7 this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or
8 conclusions in this advisory opinion may be affected by subsequent developments in the
9 law including, but not limited to, statutes, regulations, advisory opinions, and case law.
10 Any advisory opinions cited herein are available on the Commission's website.

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On behalf of the Commission,

Ellen L. Weintraub
Chair