

United States Senate

WASHINGTON, DC 20510

DEC -2 PM 3:55

December 2, 2008

Thomaseia P. Duncan
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 6128

Dear Ms. Duncan:

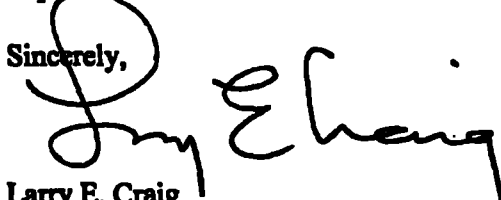
This responds to the Federal Election Commission (FEC) letter dated November 18, 2008, from Jeff S. Jordan, notifying me of the Commission's receipt of a complaint against me.

That complaint objects to my using campaign funds to pay expenses incurred for legal representation before the Senate Ethics Committee and the Minnesota state court in connection with my dispute over a misdemeanor charge in Minneapolis.

I strongly believe no action should be taken against me in this matter. Enclosed is an October 4, 2007 letter to me from attorneys Stanley M. Brand and Andrew D. Herman, analyzing relevant FEC opinions and concluding that the expenses in question may be paid wholly with campaign funds. I request the Commission's review and consideration of the arguments contained in the Brand/Herman letter. I would also offer this letter as evidence that I did make a good faith effort to ascertain the legality of using campaign funds for these expenses.

Please be assured that I stand ready to furnish the Commission with all records or documents relating to this matter. I hope you will not hesitate to contact me, should you require additional information or clarification.

Sincerely,



Larry E. Craig
United States Senator

LEC/br

Enclosure: 10/4/07 Brand Law Group letter

1000 DEC -9 A 10:55

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

1700444-1000-1

BRAND LAW GROUP

A PROFESSIONAL CORPORATION
923 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005

TELEPHONE: (202) 682-9700
TELECOPIER: (202) 737-7585

October 4, 2007

HAND DELIVERED

The Honorable Larry E. Craig
United States Senate
SH-520 Hart Senate Office Building
Washington, D.C. 20510-1203

Re: Use of Campaign Funds for Senator Craig's Legal Expenses

Dear Senator Craig:

You have asked us to provide advice regarding your use of campaign funds to pay for expenses incurred for legal representation before the Senate Ethics Committee and in Minnesota state court. These legal services stem from a misdemeanor charge in Minneapolis which you are contesting. After reviewing the Constitution, federal statutes and regulations, and Federal Election Commission ("FEC") advisory opinions, it is our conclusion that you may utilize campaign funds to pay for all of your legal expenses relating to this matter in both venues.

First, it is clear that FEC advisory opinions authorize full payment with campaign funds for legal representation in all matters before the Senate Ethics Committee. See FEC Advisory Opinion ("AO") 2006-35 at 3 (candidate's committee "may use campaign funds for legal expenses related to the inquiry by the House Ethics Committee"); FEC AO 1998-1 at 6 ("[a]ny review or investigation by the House Ethics Committee of Mr. Hilliard and his efforts to respond to that investigation will be 100% payable with campaign funds").

Second, although we conclude that all expenses incurred for your legal representation in Minnesota state court are also fully payable with campaign funds, we have found no directly applicable FEC opinions. Accordingly, this question requires some additional explication.

Federal law permits elected officials to use campaign contributions for, *inter alia*, "ordinary and necessary expenses incurred in connection with duties of the individual as

BRAND LAW GROUP

The Honorable Larry E. Craig

October 4, 2007

Page 2

a holder of Federal office." 2 U.S.C. § 439a(a)(2). The statute prohibits "personal use" of campaign funds. *Id.* § 439a(b)(1). The FEC has promulgated regulations stating that personal use "means any use of funds in a campaign account . . . to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 C.F.R. § 113.1(g)(1)(i). FEC regulations also provide that the Commission will determine on a "case-by-case basis" whether a federal officeholder's use of campaign funds for legal expenses constitutes personal use. *Id.* § 113.1(g)(1)(ii)(A).

Accordingly, we must address whether the charge in Minnesota state court would exist "irrespective" of Senator Craig's duties as a United States Senator. In this regard, the United States Constitution requires that a Senator be "an Inhabitant of that State for which he shall be chosen." U.S. Const., art. I, § 3, cl. 2. The Constitution also provides that Senators "in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same." U.S. Const., art. I, § 6, cl. 1. Accordingly, the Constitution establishes the need for members of Congress to travel between Washington, D.C. and their home states or districts and addresses their rights while doing so.

In this instance, the events giving rise to the charge in Minnesota state court occurred while Senator Craig was traveling from his home state of Idaho to his Senate office in Washington, D.C. Based on the Inhabitancy Clause, together with the Immunity from Arrest Clause, Senator Craig's travel is a necessary incident of his status as a U.S. Senator. As such, it is our opinion that any obligations or expenses incurred as a result of that official travel, including any legal fees stemming from events that occurred during the trip, would not exist irrespective of Senator Craig's duties as a federal officeholder.¹

Our research has not revealed any direct FEC guidance on this matter. FEC advisory opinions have rejected the use of campaign funds for "allegations related to matters of marital status, compliance with local tax codes, veterans benefit eligibility, and certain tax deductibility issues." FEC 1998-1 at 4 (citing related opinions). The FEC has apparently never addressed legal expenses stemming from official travel. In explaining its case-by-case approach, however, the Commission has "reaffirm[ed] its

¹ While these expenses would not exist irrespective of Senator Craig's official travel obligations, the alleged conduct that is the subject of the Minnesota state case does not relate to the performance of official Senate duties and, thus, does not fall within the scope of activities that the Senate has previously found come within the disciplinary purview of the Senate Ethics Committee. See September 5, 2007 letter from Stanley M. Brand and Andrew D. Herman to the Honorable Barbara Boxer, Chairwoman, Senate Ethics Committee.

1707474-1000001

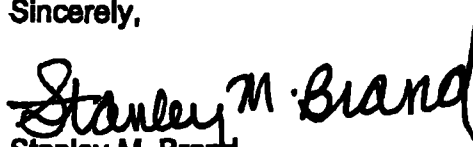
BRAND LAW GROUP

The Honorable Larry E. Craig
October 4, 2007
Page 3

long-standing opinion that candidates have wide discretion over the use of campaign funds. If the 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." 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995) (emphasis added). Because this matter directly resulted from Senator Craig's official travel, it is our opinion that use of campaign funds for related legal expenses would not be considered personal use.

In sum, it is our conclusion that all legal expenses relating to all matters before the Senate Ethics Committee and all proceedings in Minnesota state court involving the pending misdemeanor charge may be paid wholly with campaign funds.

Sincerely,

Handwritten signature of Stanley M. Brand in black ink.

Stanley M. Brand
Andrew D. Herman

SMB:mob

170444410024