

RECEIVED

By Office of the Commission Secretary at 8:05 am, Mar 25, 2021



FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 21-19-B
AGENDA ITEM
For meeting of March 25, 2021
SUBMITTED LATE

March 24, 2021

MEMORANDUM

TO: The Commission

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

Neven F. Stipanovic *NFS*
Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Heather Filemyr *HF*
Attorney

Subject: Draft AO 2021-03 (NRSC and NRCC) – Revised Draft A

Attached is a proposed draft of the subject advisory opinion. We have been asked to place this draft on the Agenda by one or more Commissioners.

Members of the public may 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 2021-03

2

3 Jessica Furst Johnson, Esq.
4 Chris Winkelman, Esq.
5 Holtzman Vogel Josefiak Torchinsky PLLC
6 15405 John Marshall Highway
7 Haymarket, VA 20169

REVISED DRAFT A

8

9 Dear Ms. Johnson and Mr. Winkelman:

10 We are responding to your advisory opinion request on behalf of the National
11 Republican Senatorial Committee (the “NRSC”) and the National Republican
12 Congressional Committee (the “NRCC”) regarding the application of the Federal
13 Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations
14 to the proposed use of the campaign funds of the members of Congress who comprise the
15 NRSC and NRCC to pay for personal security to protect themselves and their families.

16 The Commission concludes that the proposed use of campaign funds for bona fide
17 personal security personnel services against threats arising from the members’ status as
18 officeholders is a permissible use of campaign funds under the Act and Commission
19 regulations.

20 ***Background***

21 The facts presented in this advisory opinion are based on your letter received on
22 January 27, 2021, and on public disclosure reports filed with the Commission.

23 The NRSC and NRCC are national party committees. Advisory Opinion
24 Request at AOR002.¹ The NRSC is comprised of all sitting Republican members of the

¹ See also NRSC, FEC Form 1 (Statement of Organization) (filed Oct. 3, 2020), <https://docquery.fec.gov/pdf/753/202010039285004753/202010039285004753.pdf>; NRCC, FEC Form 1 (Statement of Organization) (filed Feb. 5, 2021), <https://docquery.fec.gov/pdf/441/202102059427031441/202102059427031441.pdf>.

1 United States Senate, and the NRCC is comprised of all sitting Republican members of
2 the United States House of Representatives. *Id.* The NRSC's and NRCC's primary
3 functions are to aid in the election of Republican candidates for office, and in that role the
4 NRSC and NRCC provide guidance to Republican candidates for federal office and
5 officeholders. *Id.* The NRSC and NRCC seek this advisory opinion "on behalf of their
6 Members currently serving in federal office."

7 The request lists numerous instances of "concrete threats of physical violence
8 against Members and their families" and responses by law enforcement agencies, going
9 back several years and continuing to the present, and the "worsened" threat environment
10 as assessed by the Capitol Police. *Id.* AOR003-007. In response to the recent and
11 ongoing threats of physical violence against senators and representatives and their
12 families due to their status as officeholders, some officeholders have considered
13 increasing security measures, including hiring personal security personnel. AOR002.
14 Senators' and Representatives' "vulnerability to potential threats is significantly
15 heightened when they are away from home," while the responsibilities of their offices
16 require them and their families to appear frequently in public settings. AOR005. Thus
17 "the most practical and effective solution for protecting the safety of Members and their
18 families is the employment of personal security personnel." *Id.* The request is limited to
19 situations where Members and their families are not otherwise being protected by federal
20 law enforcement agents, AOR002, or the Capitol Police, AOR006. Private security
21 personnel retained pursuant to this request would not interfere with the operations of
22 federal law enforcement agencies. AOR002.

1 ***Question Presented***

2 *May the Members of the United States Senate and United States House of*
3 *Representatives that comprise the NRSC and NRCC permissibly use campaign funds to*
4 *pay for personal security personnel to protect both the Member and the Member's*
5 *immediate family due to threats arising from his or her officeholder status ?*

6 ***Legal Analysis and Conclusion***

7 Yes, Members of the United State Senate and United States House of
8 Representatives that comprise the NRSC and the NRCC may use campaign funds to pay
9 for bona fide personal security personnel services to protect themselves and their
10 immediate families due to threats arising from their status as officeholders when they are
11 not otherwise being protected by federal law enforcement agents or the United States
12 Capitol Police.²

13 The Act identifies six categories of permissible uses of contributions accepted by
14 a federal candidate, two of which are “ordinary and necessary expenses incurred in
15 connection with the duties of the individual as a holder of Federal office,” and “any other
16 lawful purpose” not prohibited by 52 U.S.C. § 30114(b). 52 U.S.C. § 30114(a); *see also*
17 11 C.F.R. § 113.2(a)-(e).

18 The Commission has issued a number of advisory opinions authorizing the use of
19 campaign funds to protect against threats to officeholders’ physical safety, on the grounds
20 that the need for such security expenses would not exist if not for the officeholders’

² As indicated in the request, “immediate family” means members of the officeholder’s household, including a spouse, minor children, or other relatives who normally reside with the officeholder. AOR001 n.3

1 activities or duties. In Advisory Opinion 2020-06 (Escobar), Advisory Opinion 2011-17
2 (Giffords), Advisory Opinion 2011-05 (Terry), and Advisory Opinion 2009-08
3 (Gallegly), members of Congress faced specific and ongoing threats to the safety of
4 themselves and their families. The facts presented in those advisory opinions suggested
5 that the threats were motivated by the requestors' public roles as federal officeholders,
6 candidates, or both.

7 The Commission concluded in each instance that the expenses for the proposed
8 security upgrades would not have existed irrespective of the requestors' duties as federal
9 officeholders or candidates. Therefore, the Commission concluded that the use of
10 campaign funds to pay for the security upgrades was permissible under the Act or
11 Commission regulations. *See* Advisory Opinion 2020-06 (Escobar) at 3; Advisory
12 Opinion 2011-17 (Giffords) at 3; Advisory Opinion 2011-05 (Terry) at 4; Advisory
13 Opinion 2009-08 (Gallegly) at 4.

14 The Commission has also previously considered the implications of the
15 heightened threat environment faced by Members of Congress collectively, necessitating
16 increased residential security measures even if an individual Member has not received
17 direct threats. In Advisory Opinion 2017-07 (Sergeant at Arms), the Commission
18 considered information from the House Sergeant at Arms about the threats faced by
19 Members of Congress due to their status as federal officeholders, and the
20 recommendation of the Capitol Police that Members of Congress install or upgrade
21 residential security systems to protect themselves and their families. In light of that
22 information, the Commission concluded that certain costs of installing or upgrading home
23 security systems would constitute ordinary and necessary expenses incurred in

1 connection with Members' duties as federal officeholders, and that therefore Members of
2 Congress may use campaign funds to pay for reasonable costs associated with home
3 security systems. *See* Advisory Opinion 2017-07 (Sergeant at Arms) at 3.

4 Here, the Commission considers the need for officeholders to take proactive
5 measures to protect themselves and their immediate families due to threats arising from
6 their status as officeholders. Similar to the need for increased residential security, the
7 need for personal security for officeholders and their immediate family members in the
8 context requested arises due to officeholders' roles as elected officials. Under these
9 circumstances, the reasonable costs of bona fide personal security personnel services for
10 officeholders and their immediate family members constitute ordinary and necessary
11 expenses incurred in connection with officeholders' duties and are a permissible use of
12 campaign funds under the Act and Commission regulations.

13 For the purposes of this advisory opinion, "bona fide personal security personnel
14 services" are defined as those personal security personnel services provided by a person
15 or entity legally permitted to offer such services under the laws of the state in which the
16 services are offered and whose provision of such services is (a) licensed and/or (b)
17 insured or bonded.

18 Accordingly, the Members that comprise the NRSC and NRCC may use
19 campaign funds to pay for bona fide personal security personnel services to protect
20 themselves and their immediate families due to threats arising from their status as
21 officeholders. The Commission emphasizes this conclusion is based on the information
22 provided about security threats that exist due to the Members' duties as federal

1 officeholders. *See* Advisory Opinion 2017-07 (Sergeant at Arms); Advisory Opinion
2 2011-17 (Giffords) at 3.

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

15

16
17
18
19
20
21

On behalf of the Commission,

Shana M. Broussard
Chair