

February 4, 1997

AOR 1997-02

Lawrence R. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20468

FEB 5 10 53 AM '97

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Attn: N. Bradley Litchfield

Re: Advisory Opinion Request

Dear Mr. Noble:

On behalf of The Congressional Institute, Inc. ("Congressional Institute"), The Aspen Institute, Inc., Rep. David E. Skaggs (D-CO) and Rep. Ray LaHood (R-IL), and others, we hereby request an Advisory Opinion from the Federal Election Commission ("Commission" or "FEC") pursuant to 11 C.F.R. § 112.1.

The Congressional Institute and The Aspen Institute, Inc., with the support of the Democratic and Republican House leadership, are planning a Bipartisan Congressional Retreat ("Retreat") for Members, Members' spouses and families, and select Congressional staff. The Retreat will be held at the Hershey Lodge and Convention Center in Hershey, Pennsylvania, the weekend of March 7-9, 1997. The costs of the Retreat will be underwritten in principal part by a grant from the Pew Charitable Trusts. Retreat organizers will seek to defray the balance of the expense by charging an attendance fee of \$60 for Members, and for Members' spouses and children, an additional \$30 and \$10, respectively. Some Members will also be paying travel expenses related to attending the Retreat.

Our clients request an Advisory Opinion on whether Members can pay the attendance fees and travel expenses for the Retreat out of campaign funds under the Federal Election Campaign Act of 1971 as amended ("FECA" or "Act"), 2 U.S.C. § 439a, and pertinent Commission regulations.

BACKGROUND

The Origins and Purpose of the Retreat

During the last Congress, Congressional leaders from both parties decried the often harsh partisan atmosphere and hostile work environment in the U.S. House of Representatives. The leaders, observing that Members have little opportunity to get to know one another outside of Congress, concluded that a lack of familiarity and trust among Members contributed to the hostile legislative and political environment.

Messrs. Skaggs, LaHood and others responded to these concerns by proposing a Bipartisan Retreat for all House Members to take place at the beginning of the 105th Congress. In a letter to the Congressional leadership before the conclusion of the last session, organizers of the Retreat stated as their main purpose permitting "Members to get to know each other before the difficult work of the 105th Congress began in earnest and to establish a more constructive spirit and ethic for member-to-member relations." (Exhibit A). On August 15, 1996, the Committee on Standards of Official Conduct granted Members permission to solicit charitable support for the Retreat. In granting Members permission to solicit funds, the Committee stressed "the bipartisan nature of the retreat for which [the Members] seek funding, its support by the leadership of both parties, and its potential benefit for the Congress as a whole" The Honorable Nancy Johnson and The Honorable Jim McDermott, Letter to The Honorable David E. Skaggs, Aug. 16, 1996, (Exhibit B). In November, the Congressional Leadership affirmed its support for the Retreat and urged Members from both parties to attend. (Exhibit C).

A Bipartisan Congressional Retreat Planning Committee was formed and cooperated with The Aspen Institute¹ in seeking funding from the Pew Charitable Trusts; The Congressional Institute² accepted responsibility for the logistics;

¹ Aspen is recognized by the Internal Revenue Service as a 501(c)(3) entity. Aspen has been involved in a wide variety of educational and philanthropic endeavors.

² The Congressional Institute is a recognized 501(c)(4) entity. Founded in 1987 as a not-for-profit research organization, The Congressional Institute works directly with Members of Congress and the public to improve the way that the Congress addresses complex policy questions.

February 4, 1997

Page 3

the Campaign for Common Ground was charged with developing the program design; and the Spouses' Organization of the House of Representatives assumed responsibility for program planning and logistical arrangements for families.

Other arrangements to promote the highest quality experience for the Retreat participants include the presentation of a research paper from Kathryn Hall Jamieson of the Annenburg School for Communications at the University of Pennsylvania to examine the history of relations among Members of Congress, old patterns and new standards of discourse and (in the words of the grant proposal to the Pew Charitable Trusts) "some suggestion for setting reasonable expectations for improving members' interactions and dialogue." A presentation will also be made by historian David McCulloch and a video has been prepared to show the historical context of Congressional discourse and citizen reaction.

The Retreat Program

The Retreat will take place the weekend of March 7-9, 1997. Members and their families and some staff will travel together from Washington to Hershey, Pennsylvania, and spend the weekend together at the Hershey Lodge and Convention Center. During the Retreat, Members from both parties and their staffs will attend a wide variety of sessions on public policy and political matters, and consider the impact of their Congressional duties on their personal and family lives.

A full program has been developed with plenary and small group sessions. The plenary session, attended by all Members and families, will provide historical context and promote Member interaction. Members will thereafter meet in small group sessions to further analyze the current difficulties in House Member interactions and to address possible changes leading to a more effective House working environment. Members' spouses will also attend working sessions. While Members and their staffs are in various working groups, a full children's program will be available to keep all participants involved.

(footnote continued)

On seven different occasions since 1987, Members, their spouses, leading policy experts, and academics have attended conferences organized by The Congressional Institute.

DISCUSSION

2 U.S.C. § 439a provides that excess campaign funds may be used for any lawful purpose, including the purpose "to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office." Id. It appears that payment of the fees and travel expenses out of excess campaign funds would be fully consistent with the Act.

As the sponsoring charities and the House Standards Committee have recognized, the Retreat is designed as an opportunity for Members and their families and staffs to build stronger relationships toward the goal of more effective work in Congress. The payment of a portion of the expenses with campaign funds "fulfill[s] a commitment, obligation or expense" that would not exist "irrespective of the candidate's . . . duties as a Federal officeholder." 11 C.F.R. § 113.1(g)(1)(ii). The FEC has stressed that "[i]f the candidate can reasonably show that the expense at issue resulted from campaign or officeholder activities," the expense is payable from campaign funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995). The origin and purpose of the Retreat demonstrate that this standard is fully satisfied here. See also Advisory Opinion 1996-19, Fed. Election Camp. Fin. Guide (CCH) ¶ 6201 (1996) (a Member may use campaign funds to pay for the Member's wife and children to attend the Republican National Convention as integral participants in the Member's campaign effort). See also Advisory Opinion 1995-47, Fed. Election Camp. Fin. Guide (CCH) ¶ 6182 (1995) (same); Advisory Opinion 1996-20, Fed. Election Camp. Fin. Guide (CCH) ¶ 6203 (1996) (permitting a Member to use campaign funds to pay for the Member's Chief of Staff to attend the Republican National Convention).

The Commission has also made clear that "the expenses of an accompanying spouse can be paid with campaign funds when an officeholder travels to attend an official function." 60 Fed. Reg. 7862, 7872 (Feb. 9, 1995). This is the case "even if the spouse has no direct role in the activities that take place during the event." The Commission recognizes that "the spouse's attendance alone amounts to a form of participation in the function." Id. Here, Members' families will play a prominent role in the Retreat's activities.

February 4, 1997
Page 5

We thank you for your time and attention to this matter and look forward to the Commission's response. Please do not hesitate to contact us if you need any additional information regarding the issues raised by this Retreat.

Respectfully submitted,



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607 - 14th Street, N.W.
Washington, DC 20005-2011
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Congress of the United States
Washington, DC 20515

The Honorable Richard Gephardt
House of Representatives
Washington, D.C. 20515

Dear Mr. Leader:

The ability of the House of Representatives to deal successfully with the challenges facing the nation depends on the level of trust and the working relationships that exist among members. We believe there is a real need for a considered and concerted effort to improve the House in this respect.

Without belaboring the experience of the last several years, we all seek a greater degree of civility, mutual respect, and -- when possible -- bipartisanship. We believe this can be accomplished without having to compromise vigorous debate or legitimate disagreement. But it will take work and a certain commitment.

We are writing you and the Speaker to suggest that you agree to set aside a long weekend early in 1997 for the entire membership to meet together informally at an appropriate site near Washington.

It would be premature now to try to lay out any very detailed agenda. The main purpose would be to permit members to get to know each other before the difficult work of the 105th Congress began in earnest and to establish a more constructive spirit and ethic for member-to-member relations.

We hope you agree that such a session would help create a more congenial and productive work environment, regardless of who may have the majority after the election. We recommend that you appoint a planning committee drawn equally from each party to develop a specific proposal that could be approved by the joint leadership before sine die adjournment of the 104th Congress.

Thank you very much for your consideration.


David E. Skaggs


Amo Houghton

NANCY L. JOHNSON, Chairman
CHAIRMAN

JIM BURTON, Kentucky
PORTER J. GARD, Florida
DAVID L. HOOPER, Ohio
STEPHEN SCHIFF, New Mexico

THEODORE J. VAN DE WEE, Chief Counsel

ONE HUNDRED FOURTH CONGRESS

U.S. House of Representatives

**COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT**

Washington, DC 20515-6828

August 16, 1996

JIM GIBSON, Tennessee
FRANK R. RAYBURN, Chairman

WILLIAM L. BERRY, Maryland
NANCY PELOSI, California
ROBERT A. BRADY, Pennsylvania
THOMAS G. SWARTZ, Ohio

SUITE 415, THE CAPITOL
PH: 202-225-7100

The Honorable David E. Skaggs
U.S. House of Representatives
1124 Longworth House Office Building
Washington, D.C. 20515

Dear Colleague:

This responds to your letter of August 2, 1996, seeking permission to solicit funds from the Pew Charitable Trust to support a bipartisan retreat for all House Members at the beginning of the 105th Congress. The primary purpose of this retreat would be to encourage civility and mutual respect in the House of Representatives, so as to begin the next Congress on a more positive and constructive basis. The Committee's guidance is as follows.

House Rule 52 (the gift rule) prohibits registered lobbyists and agents of foreign principals from making any financial contributions or expenditures relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of Members, officers, or employees. The implication of this provision is that persons or organizations that are *not* registered lobbyists or agents of foreign principals may contribute toward Member retreats.

Clause 2 of Rule 52 authorizes Members to accept reimbursements from private sources other than registered lobbyists or agents of foreign principals for necessary transportation, lodging and related expenses for travel to a meeting, speaking engagement, factfinding trip or similar event in connection with the duties of the Member. These reimbursements must be disclosed within 30 days of return on the enclosed Member Travel Disclosure Form, and again on the annual Financial Disclosure Statement filed on May 15 of the succeeding calendar year.

With respect to the solicitation letter itself, a government-wide restriction (codified at 5 U.S.C. § 7353) bars Members, officers, and employees of the House from asking for or accepting anything of value from anyone who seeks official action from the House, does business with the House, or has interests that may be substantially affected by the performance of official duties. The same statute authorizes the Committee on Standards of Official Conduct, as supervising ethics office for the House, "to issue rules or regulations implementing [the law] and providing for such reasonable exceptions as may be appropriate."

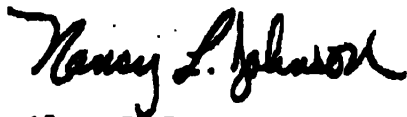
The Honorable David E. Skaggs
August 16, 1996
Page 2

In its Memorandum for All Members, Officers, and Employees, dated April 4, 1995, the Committee adopted a policy that prohibits any Member, officer, or employee of the House from soliciting funds for any organization, regardless of tax status, which is established or controlled by a Member (or Members) of Congress. The only exceptions are campaigns and other political entities, and organizations whose principal activities are *unrelated* to a Member's official duties. The reason for the new restriction is that the Committee believes that there is an inherent risk that the operations of an organization established or controlled by Members will improperly subsidize the operations of the congressional offices of its affiliated Members in violation of House Rule 45.

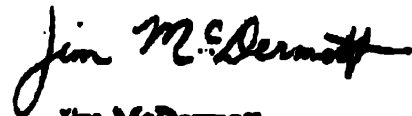
The Committee is, however, authorized to grant reasonable exceptions to the solicitation ban. Based on the bipartisan nature of the retreat for which you seek funding, its support by the leadership of both parties, and its potential benefit for the Congress as a whole, we believe that this is an appropriate case in which to exercise the Committee's authority to grant exceptions. Therefore, we approve your request to solicit the Pew Charitable Trust for funding. No solicitation may bear official letterhead, "Congress of the United States," "House of Representatives," "official business," or the Great Seal (House Rule 43, clause 11; 18 U.S.C. § 713).

If you have any further questions, please contact the Committee's Office of Advice and Education at extension 5-3757.

Sincerely,



Nancy L. Johnson
Chairman



Jim McDermott
Ranking Democratic Member

NLJ/JM:elw

**Congress of the United States
House of Representatives
Washington, DC 20515**

NOV 15 1996

November 14, 1996

Dear Colleague:

We are writing to urge you to reserve time for you and your family to attend the first ever bipartisan retreat being planned by several of our colleagues for Members of the 105th Congress. The retreat is scheduled for March 7-9, 1997, at the Hershey Conference Center in Hershey, Pennsylvania.

This unique retreat is intended simply to improve the working environment in the House. By enabling Members to spend quality time with each other, along with their families, we are hopeful we can establish a more collegial atmosphere, and, thereby, better working relationships.

Final details of the retreat are still being developed by a bipartisan planning committee made up of Members who initiated the retreat idea. The planning committee assures us that, in addition to sessions aimed at building good working relationships, the retreat will offer many social and recreational activities for Members and their families. Day care for small children will be available, as well as entertainment and recreational opportunities suitable for older children.

Again, we encourage you to keep March 7-9, 1997, open on your calendar to attend what we feel will be a most enjoyable and useful retreat for House members and their families.

Sincerely,


Newt Gingrich, Speaker Dick Arme, Majority Leader Richard Gephardt, Minority Leader