



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

February 9, 1981

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-2

The Honorable William J. Coyne  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Coyne:

This responds to your letter of January 8, 1981, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to payments made from campaign funds.

You have asked whether as a Member of Congress you may pay, from campaign funds, the costs of a reception held for constituents on the day of your swearing-in to office.

Your request does not indicate whether you regard the purpose of the reception as celebrating the efforts of those constituents who assisted in your successful 1980 election campaign, or as an event to encourage the continuing endeavors of your constituents in a possible campaign for your reelection to Federal office in 1982. In numerous advisory opinions the Commission has stated that insofar as concerns the Act, candidates or their principal campaign committees have broad discretion in deciding upon those expenditures which will best advance their political purposes. See Advisory Opinions 1980-123, 1980-49, 1980-29, copies enclosed. Noting this broad discretion the Commission has concurred in the treatment of certain post-election expenses as made for the purpose of influencing an election to Federal office. Advisory Opinions 1980-123 and 1977-60. Thus, if the activity described in your request has an election influencing purpose, either retrospective or prospective, the costs involved could be regarded as expenditures for purposes of the Act and Commission regulations.

The Act and Commission regulations also provide that excess campaign funds may be used by a candidate or individual to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office, may be contributed to any organization described in 26 U.S.C. 501(c), or may be used for any other lawful purpose, including transfers without limitation to any national, State, or local committee of any political

party. 2 U.S.C. 439a and 11 CFR 113. While the Act permits use of excess campaign funds for "any lawful purpose," because you were not a member of Congress on January 8, 1980, no personal use of the excess campaign funds may be made by you or any other person. 2 U.S.C. 439a. See also Advisory Opinion 1980-113, copy enclosed.

Accordingly, another question presented by your request is whether payment from excess campaign funds for a reception for constituents constitutes a "personal use" of those funds and thus prohibited by 439a, or whether the described expenses are "ordinary and necessary expenses" incurred in connection with your duties as a Federal officeholder.

In Advisory Opinion 1980-138 (see copy enclosed), the Commission considered a situation somewhat similar to the one presented here. In that opinion the Commission recognized that certain transition and relocation expenses which were incurred as a direct result of election to Federal office are "incidental" to holding such an office and may be paid from excess campaign funds. However, expenses which would exist regardless of an individual's election to Federal office are not "incidental" and may not be paid from campaign funds. In this case, the expenses described in your request relate to celebrating with your constituents an event that commences your official status as a holder of Federal office. Thus, they are viewed by the Commission as "ordinary and necessary expenses" associated with the duties of a Federal officeholder. Accordingly, the Commission concludes that your use of excess campaign funds to pay for the described reception is permissible under the Act. Of course any disbursements by your campaign committee must be properly disclosed as required by the Act. See 2 U.S.C. 434 and 11 CFR 104.

The Commission may express no opinion as to the possible application of House rules to the described activity, nor as to any tax ramifications, since those issues are outside its jurisdiction.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

John Warren McGarry  
Chairman for the  
Federal Election Commission