



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 1, 1996

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996-44

The Honorable Charles Wilson
U.S. House of Representatives
Washington D.C. 20515-4315

Dear Mr. Wilson:

This refers to your letter dated August 10, 1996, which was received by the Commission on September 30, 1996. Your request concerns the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use of campaign funds to move your office furnishings from your home state to Washington, D.C.

You are currently serving as a member of the U.S. House of Representatives representing the 2nd Congressional District of Texas. Your principal campaign committee is the Wilson Committee ("the Committee"). You state that you are planning to leave office; however, rather than returning to Texas, you are planning to remain in Washington, D.C. at the conclusion of this Congressional session. As part of the closing of your Congressional offices, you wish to use campaign funds for the shipping costs of moving items from your Congressional district office in Lufkin, Texas, to Washington. Specifically, you describe these items as "framed pictures, art work, and assorted memorabilia which have become part of" your district office.

The Act and Commission regulations provide that excess campaign funds may be used for various specific purposes, but may not be converted to the personal use of the candidate or any other person.¹ 2 U.S.C. 439a; 11 CFR 113.2(c) and (d). Commission regulations provide guidance regarding what would be considered personal use of campaign funds. Personal use is defined as "any use of funds in a campaign account of a present or former candidate 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 CFR 113.1(g). See Advisory Opinions 1996-14, 1996-9, 1995-47, 1995-46, and 1995-42.

Commission regulations list a number of purposes that would constitute per se personal use.² 11 CFR 113.1(g)(1)(i). Where a specific use of campaign funds is not listed as personal use, the Commission will make a determination on a case-by-case basis using the general definition of personal use. 11 CFR 113.1(g)(1)(ii).³

Under 11 CFR 113.2(a)(2), excess campaign funds may also be used to pay any ordinary and necessary expenses incurred in connection with one's duties as a holder of Federal office. Such expenses include the costs of winding down the office of a former Federal officeholder for a period of six months after he or she leaves office. See Advisory Opinion 1996-14.

The use of your Congressional office and its furnishings has been an integral part of performing your duties as a holder of Federal office. Before the next Congress convenes on January 7, 1997, your official duties will end, and you will be required to vacate your office space. These described furnishings will have to be removed. Accordingly, the costs of transporting your office furnishings from your Lufkin, Texas, Congressional office to Washington, D.C., where you will remain upon leaving office, would be part of the winding down costs described in section 113.2(a)(2).⁴ Campaign funds held by the Committee may be used to pay these expenses because such a payment would not be a prohibited conversion of campaign funds to personal use.⁵

All expenses consistent with this opinion should be reported as other disbursements by the Committee, with the specific payee(s) and purpose noted. See 11 CFR 104.3(b)(2) and (b)(4)(vi); see also Advisory Opinion 1993-6.

The Commission expresses no opinion regarding the application of any rules of the U.S. House of Representatives, or any tax ramifications of the proposed disbursements, because these issues are not within 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,

(signed)

Lee Ann Elliott
Chairman

Enclosures (AOs 1996-14, 1996-9, 1995-47, 1995-46, and 1993-6)

1 Commission regulations define the phrase "excess campaign funds" to mean "amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures." 11 CFR 113.1(e).

2 Under section 113.1(g)(1)(i), personal use includes, but is not limited to, several specific purposes which are described in the regulations. None of these prohibited personal uses are applicable to the situation here.

3 In explaining the application of the case-by-case approach, the Commission: reaffirm[ed] its 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.

Explanation and Justification, Commission Regulations on Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (February 9, 1995).

4 Your request deals solely with the use of campaign funds to move office furnishings from your Congressional office. Since you have not asked any question regarding the shipping of personal items from Texas to Washington D.C. this opinion does not address whether spending campaign funds for that purpose would be a prohibited personal use. For a recent discussion of these issues see Advisory Opinion 1996-14.

5 Your situation is somewhat different from the set of circumstances examined in Advisory Opinion 1996-14. In that opinion, a Member of Congress retiring to his home state wished to use campaign funds to move (among other things) office furnishings from his Congressional office in Washington to his home in Texas. Your situation is the reverse, i.e. moving office furnishings from a Texas Congressional office to D.C. However, the Commission finds no basis for a distinction under the rules when the furnishings in a Congressional office are being moved between Washington and the Member's district.