

RECEIVED

By Office of the Commission Secretary at 4:55 pm, Jul 06, 2017



FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 17-32-A
AGENDA ITEM
For meeting of July 13, 2017

July 6, 2017

MEMORANDUM

TO: The Commission

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

Robert M. Knop *RMK*
Assistant General Counsel

Joanna S. Waldstreicher *JSW*
Attorney

Subject: AO 2017-07 (Sergeant at Arms) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on July 12, 2017.

Members of the public may also 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 2017-07

2

3 Hon. Paul D. Irving

4 Sergeant at Arms

5 U.S. House of Representatives

6 H-124 Capitol

7 Washington, DC 20515-6634

8

9 Dear Mr. Irving:

DRAFT A

10 We are responding to your advisory opinion request concerning the application of the
11 Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission
12 regulations to the proposed use of campaign contributions by Members of the United States
13 House of Representatives (“Members of Congress” or “Members”) for residential security
14 systems. The Commission concludes that Members of Congress may use campaign funds to pay
15 for costs associated with installing or upgrading a security system at the Members’ residences
16 without such payments constituting an impermissible conversion of campaign funds to personal
17 use, under the Act and Commission regulations.

18 **Background**

19 The facts presented in this advisory opinion are based on your advisory opinion request
20 received on June 21, 2017, and supplemental letter received on June 29, 2017.

21 As the Sergeant at Arms, you are the chief law enforcement official for the United States
22 House of Representatives. Advisory Opinion Request at AOR001. You state that “Members
23 receive threatening communications on a daily basis” and that the incidence of such threats is
24 increasing. *Id.* In calendar year 2016, the United States Capitol Police investigated 902
25 threatening communications received by Members, while in approximately the first six months
26 of 2017 they have investigated 950 such communications. *Id.* You characterize this as “the new
27 daily threat environment faced by Members of Congress.” *Id.* You indicate that the anonymous

1 nature of many of the threats makes the Capitol Police’s investigation of those threats
2 particularly challenging, and you contend that “Members of the U.S. House of Representatives
3 require a residential security system due to the threat environment.” AOR002.

4 **Question Presented**

5 *May Members of Congress use campaign contributions to install or upgrade residential*
6 *security systems not primarily intended to increase the value of the Members’ homes?*

7 **Legal Analysis and Conclusions**

8 Yes, Members of Congress may use campaign contributions to install or upgrade
9 residential security systems not primarily intended to increase the value of the Members’
10 homes.

11 The Act identifies six categories of *permissible* uses of contributions accepted by a
12 federal candidate. They are: (1) otherwise authorized expenditures in connection with the
13 candidate’s campaign for federal office; (2) ordinary and necessary expenses incurred in
14 connection with the duties of the individual as a holder of federal office; (3) contributions to
15 organizations described in 26 U.S.C. § 170(c); (4) transfers, without limitation, to national,
16 state, or local political party committees; (5) donations to state and local candidates subject to
17 the provisions of state law; and (6) any other lawful purpose not prohibited by 52 U.S.C.
18 § 30114(b). 52 U.S.C. § 30114(a); see also 11 C.F.R. § 113.2(a)-(e).

19 The Act prohibits federal candidates from converting contributions they have accepted to
20 their own “personal use.” 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.2(e). Conversion to
21 personal use occurs when a contribution or amount is used “to fulfill any commitment,
22 obligation, or expense” of a federal candidate or a federal officeholder “that would exist

1 irrespective” of the federal candidate’s campaign or the federal officeholder’s duties. 52 U.S.C.
2 § 30114(b)(2); see also 11 C.F.R. § 113.1(g).

3 The Act and Commission regulations provide a non-exhaustive list of items that would
4 constitute a prohibited personal use *per se*, none of which applies here. See 52 U.S.C.
5 § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i)(A)-(J). For items not on this list, such as
6 payments for residential security systems, the Commission determines on a case-by-case basis
7 whether such expenses would fall within the definition of “personal use.” 11 C.F.R.
8 § 133.1(g)(1)(ii). The Commission has long recognized that if a candidate “can reasonably
9 show that the expenses at issue resulted from campaign or officeholder activities, the
10 Commission will not consider the use to be personal use.” Personal Use of Campaign Funds, 60
11 Fed. Reg. 7862, 7867 (Feb. 9, 1995).

12 The Commission has previously concluded that payments for, or improvements to, a
13 residential security system, under certain circumstances, do not constitute personal use under
14 the Act and Commission regulations. In Advisory Opinion 2011-17 (Giffords), Advisory
15 Opinion 2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly), Members of Congress
16 faced specific and ongoing threats to the safety of themselves and their families. The facts
17 presented in those advisory opinions suggested that the threats were motivated by the Members’
18 public roles as federal officeholders and/or candidates. In all three instances, the Capitol Police
19 recommended security upgrades to the Members’ residences due to the continuing threats, and
20 the proposed upgrades were not primarily intended to increase the value of the officeholders’
21 property. The Commission concluded that the threats would not have occurred had the
22 Members not been federal officeholders and/or candidates, and that the expenses for the

1 proposed residential security upgrades would not exist irrespective of their duties as federal
2 officeholders and/or candidates. Therefore, the Commission concluded that the use of
3 campaign funds to pay for the security upgrades recommended by the Capitol Police and not
4 primarily intended to increase the value of the Members' homes would not constitute a
5 prohibited personal use of campaign contributions under the Act or Commission regulations.

6 The Commission has carefully considered the information provided by your office
7 regarding both (1) the current threat environment facing Members of Congress due to their
8 status as federal officeholders; and (2) the Capitol Police's threat assessment, resulting in its
9 recommendation that Members upgrade their residential security.¹ In light of this information,
10 the Commission concludes that Members of Congress may use campaign funds to pay for the
11 reasonable costs associated with installing or upgrading a security system at the Members'
12 residences, not primarily intended to increase the value of the Members' homes, regardless of
13 whether Members have received specific or ongoing threats, without such payments constituting
14 a prohibited personal use of campaign contributions under the Act and Commission
15 regulations.² The Commission emphasizes that this conclusion is based on the information you
16 provided about the current heightened threat environment experienced by Members of
17 Congress, as assessed by the Capitol Police, and that if the threat environment should diminish
18 significantly at some point in the future, this conclusion may no longer apply.

¹ The advisory opinion request in this instance asks only about use of campaign funds by federal officeholders. Candidates who are not federal officeholders may rely on Advisory Opinion 2011-17 (Giffords), Advisory Opinion 2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly) if the relevant facts are materially indistinguishable from the facts of those advisory opinions, or they may submit an advisory opinion request.

² The Commission assumes that officeholders' campaign committees will pay the fair market value of any such home security installation or upgrades to prevent the acceptance of potentially impermissible in-kind contributions from vendors.

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

13

14
15
16
17
18
19

On behalf of the Commission,

Steven T. Walther,
Chairman