



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 1, 2011

CERTIFIED MAIL RETURN
RECEIPT REQUESTED

ADVISORY OPINION 2011-17

Michael McNulty
Chairman
Giffords for Congress
P.O. Box 12886
Tucson, AZ 85732-2886

Dear Mr. McNulty:

We are responding to your advisory opinion request on behalf of Giffords for Congress (the “Committee”) concerning the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to the use of campaign funds to pay for enhanced security at Representative Gabrielle Giffords’s home.

The Commission concludes that because the need for enhanced security at Representative Giffords’s home is due to violence and security threats stemming from her activities as a Member of Congress, the use of campaign funds to pay for such security measures does not constitute personal use of campaign funds, and is permissible under the Act and Commission regulations.

Background

The facts presented in this advisory opinion are based on your letter received on August 17, 2011, and public disclosure reports filed by the Committee with the Commission.

Representative Gabrielle Giffords is a Member of the U.S. House of Representatives from Arizona’s 8th Congressional District. The Committee is her principal campaign committee. Representative Giffords was both a Federal officeholder and a candidate for re-election to the House of Representatives when the events giving rise to this request occurred.

On January 8, 2011, Representative Giffords was shot and severely wounded at an event sponsored by her congressional office. Since that time, Representative Giffords has been undergoing treatment at TIRR Memorial Hermann Hospital in Houston, Texas. She was recently transferred to outpatient rehabilitation, allowing her to reside in the family home in the Houston area when she is not receiving treatment.

After Representative Giffords was shot, at the request of the U.S. House of Representatives Sergeant at Arms, the U.S. Capitol Police conducted a security assessment of the Houston area family home and the general threat to Representative Giffords. The U.S. Capitol Police, following its standards and best industry practices, made several recommendations to increase the home's security that are specific to the identified security needs of Representative Giffords. The recommendations include installing improved exterior lighting, improved locks, and a duress alarm button. The estimated cost of the improvements is \$2,200. The Committee states that these security improvements are not intended to increase the value of the property.

Question Presented

May the Committee use campaign funds to pay the costs of installing the recommended additional security measures to Representative Giffords's home?

Legal Analysis and Conclusions

Yes, the Committee may use campaign funds to pay the costs of installing the recommended additional security measures to Representative Giffords's home because these costs would not constitute personal use of campaign funds under 2 U.S.C. 439a(b).

The Act identifies six categories of permissible uses of contributions accepted by a Federal candidate. They are: (1) otherwise authorized expenditures in connection with the candidate's campaign for Federal office; (2) ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of Federal office; (3) contributions to organizations described in 26 U.S.C. 170(c); (4) transfers, without limitation, to national, State, or local political party committees; (5) donations to State and local candidates subject to the provisions of State law; and (6) any other lawful purpose not prohibited by 2 U.S.C. 439a(b). 2 U.S.C. 439a(a); *see also* 11 CFR 113.2(a)-(e).

Under the Act and Commission regulations, contributions accepted by a candidate may not be converted to "personal use" by any person. 2 U.S.C. 439a(b)(1); 11 CFR 113.2(e). Conversion to personal use occurs when a contribution or amount is used "to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office." 2 U.S.C. 439a(b)(2); *see also* 11 CFR 113.1(g).

The Act and Commission regulations provide a non-exhaustive list of items that would constitute personal use, none of which applies here. *See* 2 U.S.C. 439a(b)(2)(A)-

(I); 11 CFR 113.1(g)(1)(i)(A)-(J). For items not on this list, such as payments for home security systems, the Commission determines on a case-by-case basis whether an expense would fall within the definition of “personal use.” 11 CFR 113.1(g)(1)(ii). The Commission has long recognized that if a 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 for Final Rules on Personal Use of Campaign Funds, 60 FR 7862, 7867 (Feb. 9, 1995).

The Commission has previously concluded that payments for, or improvements to, a home security system, under circumstances very similar to those presented here, do not constitute personal use under the Act and Commission regulations. In Advisory Opinions 2011-05 (Terry) and 2009-08 (Gallegly), Members of Congress who were also candidates for re-election faced specific ongoing threats to the safety of themselves and members of their families. The facts suggested that the individuals threatening both Representatives Gallegly and Terry were motivated by the Representatives’ public roles as candidates and activities as Members of Congress. In both of those advisory opinions, the proposed security upgrades to the Representatives’ homes were recommended by the U.S. Capitol Police specifically because of the continuing threats. The Commission concluded in both advisory opinions that the threats would not have occurred had the Representatives not been Members of Congress or candidates for re-election, and that the expenses for the proposed upgrades to the Representatives’ security systems would not exist irrespective of the Representatives’ campaigns or duties as Federal officeholders.

Similarly, here, the Commission concludes that the ongoing security needs of Representative Giffords identified by the U.S. Capitol Police would not exist were Representative Giffords not a Federal officeholder or a candidate for re-election. Representative Giffords was shot and severely wounded while engaged in her duties as a Federal officeholder, and the expenses for the proposed upgrades to the security system at Representative Giffords’s family home would not exist irrespective of her duties as a Federal officeholder or as a candidate for re-election. Therefore, the use of campaign funds to pay for these security system upgrades would not constitute personal use of campaign contributions, and would not be prohibited by the Act or Commission regulations. 2 U.S.C. 439a(b).

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law, including, but not limited to, statutes, regulations, advisory opinions, and case law.

The cited advisory opinions are available on the Commission's website, www.fec.gov, or directly from the Commission's Advisory Opinion searchable database at <http://saos.nictusa.com/saos/searchao>.

On behalf of the Commission,

(signed)
Cynthia L. Bauerly
Chair