



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 22, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-138

Mr. Douglas A. Riggs
Bogle & Gates
900 West Fifth Avenue
Suite 525
Anchorage, Alaska 99501

Dear Mr. Riggs:

This responds to your letter of November 13, 1980, on behalf of Senator-elect Frank H. Murkowski concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use of excess campaign funds by Mr. Murkowski.

Your letter asks whether excess campaign funds may be used to pay necessary costs incurred by Senator-elect Murkowski and his staff during the period of transition from the date of November 5, 1980 to the date he is sworn in as a United States Senator. These costs would include the costs associated with winding down his campaign headquarters and those associated with the maintenance of a transition office including: rent, postage, staff salaries, office supplies, telephone, telegraph and travel expenses for the Senator-elect. In addition, you ask whether the funds may be spent for lodging, food and other expenses incurred in moving from Alaska to Washington, D.C., and other travel to Washington, D.C. or within Alaska which may be required of the Senator-elect prior to being sworn in. You have also asked whether the excess campaign funds remaining from the Senator-elect's campaign may be used to defray the expenses of moving the Senator-elect's family to Washington, D.C., and to pay living expenses of the family during the transition period.

The Act and Commission regulations 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 Mr. Murkowski was not a member of Congress on January 8, 1980, no personal use of the excess campaign funds may be made by him or any other person. 2 U.S.C. 439a. See also Advisory Opinion 1980-113, copy enclosed.

Commission regulations define the term "Federal officeholder" to mean "an individual elected to or serving in the office of ..Senator.." 11 CFR 113.1(c). Thus, while the Senator-elect has not yet been sworn in as a United States Senator, he is nevertheless a "Federal officeholder" for purposes of 2 U.S.C. 439a and the quoted Commission regulation. Accordingly, the issue presented in your request is whether the described expenses are "ordinary and necessary expenses" incurred in connection with Mr. Murkowski's duties as a Federal officeholder and thus payable from excess campaign funds, or whether the payment from excess campaign funds of the described expenses would constitute a "personal use" of those funds and thus prohibited by 439a.

The Commission has previously recognized that excess campaign funds may be used by an individual for transition expenses of the type described herein since such expenses are ordinary and necessary expenses incidental to holding Federal office. See Re: AOR 1976-101 (dated December 1, 1976), and Advisory Opinion 1978-43, copies enclosed. In the situation presented here, the expenses associated with the Senator-elect's transition into Federal office, the expense of moving the Senator-elect and his family to Washington, D.C., and other travel between Alaska and Washington, D.C. by the Senator-elect, are incurred by the Senator-elect as a result of his election to Federal office and therefore are "incidental" to his status under 11 CFR 113.1(c) as a "Federal officeholder." As ordinary and necessary expenses incidental to holding Federal office, payment for these expenses from excess campaign funds would not constitute a "personal use" of campaign funds prohibited by 439a. Accordingly, the Commission concludes that it is permissible under the Act for the Senator-elect to pay for transition, travel, and family moving costs described in the request.

With respect to the payment of living expenses of the Senator-elect and his family (during the period between November 5, 1980, and the date he is sworn in as a United States Senator), those expenses would exist whether Mr. Murkowski was elected to Federal office or not, and accordingly, are not "incidental" to his election to Federal office. Payment from excess campaign funds for these living expenses would therefore be a "personal use" of such funds prohibited by the Act since the Senator-elect was not a member of Congress on January 8, 1980. 2 U.S.C. 439a. See also Advisory Opinion 1980-113, copy enclosed.

As to the winding down expenses of the campaign, the Senator-elect's principal campaign committee may use campaign funds to pay for such expenses. The Commission has held in several previous opinions that campaign committees have wide discretion in how campaign funds may be spent in the course of or in closing down the operation of a campaign committee so long as they are properly reported under 2 U.S.C. 434. See Advisory Opinions 1980-123, 1980-49, and 1978-5, copies enclosed.

The Commission expresses no opinion as to the possible application of Senate rules to the described activity 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 W. McGarry
Vice Chairman for the
Federal Election Commission

Enclosures (AOs 1978-43, 1980-113, 1980-123, 1980-49, 1978-5, Re: AOR 1976-101)