



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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JUL 13 9 25 AM '95

July 13, 1995

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina *Ch for JCS*
Staff Director

FROM: Lawrence M. Noble *LM*
General Counsel

N. Bradley Litchfield *NBL*
Associate General Counsel

Michael G. Marinelli *mm*
Staff Attorney

SUBJECT: Draft AO 1995-23

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for July 20, 1995.

AGENDA ITEM
For Meeting of: JUL 20 1995

Attachment

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DRAFT

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-23

The Honorable Christopher Shays
P.O. Box 4238
Springdale, CT 06907

Dear Mr. Shays:

This refers to your letter dated June 8, 1995, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use of campaign funds for legal expenses arising from a lawsuit filed against you.

Your principal campaign committee is the Christopher Shays for Congress ("the Committee"). You state that in the final weeks of the 1994 campaign, one of your opponents publicly accused you of taking down his campaign signs. You dispute this accusation. Following the 1994 general election, you were named as a defendant in a civil suit making the same claim. In the discovery process relating to the lawsuit, you have "incurred a legal bill" of almost \$3,000 for legal services.

You explain that, since your role in the litigation arises solely out of your campaign for Federal office, you believe it is appropriate that these legal expenses be paid from the Committee's campaign account. You are, therefore, seeking Commission approval to have this expense paid by the Committee.

Under the Act and new Commission regulations, a

3 candidate and the candidate's campaign committee have wide
4 discretion in making expenditures to influence the
5 candidate's election, but may not convert excess campaign
6 funds to personal use. 2 U.S.C. §§431(9) and 439a; 11
7 113.1(g) and 113.2; see also Advisory Opinion 1995-20.^{1/}

8 The Commission's revised regulations provide guidance
9 regarding what would be considered personal use of campaign
10 funds. Personal use is defined as "any use of funds in a
11 campaign account of a present or former candidate to fulfill
12 a commitment, obligation or expense of any person that would
13 exist irrespective of the candidate's campaign or duties as a
14 Federal officeholder." 11 CFR 113.1(g)

15 Legal expenses are not listed among those expenditures
16 that would be considered per se personal use.^{2/} The
17 regulations state that the Commission will determine on a
18 case by case basis whether uses of funds in a campaign
19 account for legal expenses would fulfill a commitment,
20 obligation or expense that would exist irrespective of the
21

22 ^{1/} The relevant new regulations were published in the Federal
23 Register on February 9, 1995, (60 Fed. Reg. 7862) with an
24 effective date of April 5, 1995 (60 Fed. Reg. 17193). The
25 rules will be published in the 1996 edition of the Code of
Federal Regulations at 11 CFR 100.8(b)(22), 104.3(b)(4),
113.1(g), and 113.2.

26 ^{2/} Under section 113.1(g)(1)(i), personal use includes but is
27 not limited to funds used for the following items: household
28 food items; funeral, cremation or burial expenses; clothing;
29 tuition payments not associated with training campaign staff;
30 mortgage, rent or utility payments; tickets to non-campaign
or non-officeholder entertainment; dues, fees or gratuities
to nonpolitical organizations unless related to a specific
fundraising event; and salary payments to family members
unless paid for bona fide, campaign-related services.

3 candidate's campaign or duties as a Federal officeholder,
4 and, therefore, would be personal use. 11 CFR
5 113.1(g)(1)(ii)(A).

6 In discussing application of the case by case approach
7 to the permissible use of campaign funds for legal expenses,
8 the Commission stated that legal service expenses would
9 include those related to compliance with election laws, but
10 would not be restricted only to those purposes. See 60 Fed.
11 Reg. 7868 (February 9, 1995).^{3/} However, the Commission also
12 cautioned that the political impact of legal proceedings on a
13 campaign will not, by itself, justify the treatment of any
14 legal expenses as campaign related. Id.

15 The legal expenses described in your request pertain to
16 a law suit arising directly from campaign activity and your
17 status as a candidate. Applying the standard established by
18 section 113.1(g)(1)(ii), these expenses are clearly
19 attributable to your campaign. Therefore, campaign funds
20

21 3/ The Commission stated:

22 A committee or a candidate could incur other
23 legal expenses that arise out of campaign or
24 officeholder activities but are not related
25 to compliance with the FECA or other
26 election laws. For example, a committee
27 could incur legal expenses in its capacity
28 as the employer of the campaign staff, or in
29 its capacity as a contracting party in its
30 dealings with campaign vendors.
Consequently, the Commission has decided
that issues raised by the use of campaign
funds for a candidate's or committee's legal
expenses will have to be addressed on a case
by case basis.

Id.

3 from your committee may be used to pay the expenses of your
4 defense in the described law suit.^{4/}

5 The cost of legal expenses consistent with this advisory
6 opinion should be reported as an operating expenditure by
7 your Committee, with the purpose noted. See 11 CFR
8 104.3(b)(2) and (b)(4)(i); see also Advisory Opinion 1995-20.

9 The Commission expresses no opinion regarding any tax
10 ramifications of the proposed transaction, because these
11 issues are not within its jurisdiction.

12 This response constitutes an advisory opinion concerning
13 application of the Act, or regulations prescribed by the Com-
14 mission, to the specific transaction or activity set forth in
15 your request. See 2 U.S.C. §437f.

16
17 Sincerely,

18
19 Danny L. McDonald
20 Chairman

21 Enclosures (AOs 1995-20, 1986-9, 1977-39, and Re: AOR
22 1976-61)

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27

^{4/} This opinion is limited to the facts presented in your
28 request and does not reach any issues pertaining to the
29 formation and financing of a legal defense fund that is
30 separate and apart from the Committee. Your request does not
present any proposal for such a fund. See 11 CFR
113.1(g)(6).