



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

July 21, 1995

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 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 candidate and the candidate's campaign committee have wide discretion in making expenditures to influence the candidate's election, but may not convert excess campaign funds to personal use. 2 U.S.C. 431(9) and 439a; 11 CFR 113.1(g) and 113.2; see also Advisory Opinion 1995-20.<sup>1/</sup>

The Commission's revised 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).

Legal expenses are not listed among those expenditures that would be considered per se personal use.<sup>2/</sup> The regulations state that the Commission will determine on a case by case basis whether uses of funds in a campaign account for legal expenses would fulfill a commitment, obligation or expense that would exist irrespective of the candidate's campaign or duties as a Federal officeholder, and, therefore, would be personal use. 11 CFR 113.1(g)(1)(ii)(A).

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

The legal expenses described in your request pertain to a law suit arising directly from campaign activity and your status as a candidate. Applying the standard established by section 113.1(g)(1)(ii), these expenses are clearly attributable to your campaign. Therefore, campaign funds from your committee may be used to pay the expenses of your defense in the described law suit.<sup>4/</sup>

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

The Commission expresses no opinion regarding any tax ramifications of the proposed transaction, 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)

Danny L. McDonald  
Chairman

Enclosures (AO 1995-20)

1 The relevant new regulations were published in the Federal Register on February 9, 1995, (60 Fed.Reg. 7862) with an effective date of April 5, 1995 (60 Fed.Reg. 17193). The 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.

2 Under section 113.1(g)(1)(i), personal use includes but is not limited to funds used for the following items: household food items; funeral, cremation or burial expenses; clothing; tuition payments not associated with training campaign staff; 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 The Commission stated:

A committee or a candidate could incur other legal expenses that arise out of campaign or officeholder activities but are not related to compliance with the FECA or other election laws. For example, a committee could incur legal expenses in its capacity as the employer of the campaign staff, or in its capacity as a contracting party in its 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.

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