FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 26, 1994

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-26

Scott Douglas Cunningham
Scott Douglas Cunningham Campaign Committee
4917 Evergreen
Bellaire, TX 77401

Dear Mr. Cunningham:

This responds to your letters dated July 18 and July 21, 1994, as supplemented by informational letters, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use of funds for your campaign from revolving lines of credit held by you for a number of years.

You are a House candidate from the 22nd District of Texas. You filed as a candidate on January 18, 1994. Between 1985 and 1989, you opened lines of credit with two banks and another lending entity. For the past three to four years, the lines have been at a level of $20,000 each, and they remain at that level. You anticipate making draws on these lines up to $50,000 to cover expenditures for graphics, printing, advertising, and other campaign-related expenses. You plan to make draws during August, September, and October, 1994, in increments of approximately $5,000.

The lines of credit were opened with (1) First Republic Bank, which became NCNB, and is now NationsBank, (2) Citibank Ready Credit, and (3) Security Pacific Executive/Professional Services, which is a BankAmerica company. The agreements require you to repay the loan on an installment basis at a certain rate of interest. You state that the repayment terms for each are based upon quarterly interest rates of roughly three percent or an annual rate of 12 percent of the outstanding principal balance. You state that annual rate is based on average 90 day Treasury Bill floating rates so the actual quarterly rate may vary plus or minus half a percent.

The lines of credit were signature lines granted on the basis of your credit. You are the sole owner of the line of credit accounts and no other person is jointly or severally liable with you on

any portion of the accounts. The source of funds for repayment of the lines has been and continues to be personal income derived from your law practice. You have never used the lines previously for campaign purposes, and you have not used the lines since the beginning of the campaign.

You wish to know whether borrowing funds on the foregoing signature line of credit "where there exists an executed loan agreement documenting an obligation to repay on a fixed installment basis with interest" entails a method that assures repayment within 11 CFR 100.7(b)(11)(ii). Your inquiry may be characterized more completely as whether you may draw on these lines of credit for campaign purposes and how such draws should be disclosed.

Commission regulations provide that any loan of money by a state bank, a Federally chartered depository institution, or a depository institution whose deposits or accounts are insured by the Federal Deposit Insurance Corporation is not a contribution by the lending institution if the loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business.[1/] A loan will be deemed to be made in the ordinary course of business if it bears the usual and customary rate of interest of the lending institution for the category of loan involved, is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule. 11 CFR 100.7(b)(11). See 2 U.S.C. 431(8)(B)(vii).

Commission regulations specify two sources that will meet the Commission's standard for assurance of repayment. These are: traditional collateral, with a perfected security interest; and other sources of repayment, including future income (e.g., public financing funds, fundraising, and interest income). Loans which do not meet the criteria set out by the regulations for these two sources are considered on a case-by-case basis, based on the totality of their circumstances, to determine whether they were made on a basis which assures repayment. Explanation and Justification, Regulations on Loans from Lending Institutions to Candidates and Political Committees, 56 Fed. Reg. 67118, 67119 (December 27, 1991); 11 CFR 100.7(b)(11)(i)(A) and (B), and (ii).

According to the Explanation and Justification of the applicable regulations, the rules follow the approach that "[l]ines of credit are considered bank loans, to be treated in the same manner as other loans from lending institutions." 56 Fed. Reg. 67118, 67119 (December 27, 1991). See also 11 CFR 100.7(b)(11)(i), 100.8(b)(12)(i), and 104.3(d)(1). The lines of credit at issue are not secured by any collateral. Although your personal income has been the source of repayment, you have not made other arrangements required by the regulations to accompany loans made on the basis of future receipts, e.g., the establishment of a separate account to access funds or an assignment by the candidate to the bank to access funds. See 11 CFR 100.7(b)(11)(i)(B) (1)-(5). In addition, your request does not present a situation of lines of credit presently being acquired or renegotiated under these regulations.

Your proposal to use these lines of credit may be considered under the case-by-case option provided at 11 CFR 100.7(b)(11)(ii). The Commission notes that these lines of credit do not appear to have been obtained by you for the purpose of influencing any candidacy or other political purpose. These lines of credit, based on your personal financial status, were issued years

ago, significantly pre-dating your candidacy by at least five years, and are evidence of a longstanding relationship between the lending entities and you. The terms of the agreements, e.g., the interest rates and other provisions for repayment (including provisions relating to overdue payments, cancellation of the line by the bank, and acceleration of payments) do not appear to be out of the ordinary or unduly favorable to you; documents submitted by you indicate that these agreements are standard lines of credit issued by the bank for other customers. Based on the pre-existing and longstanding nature of these arrangements, as well as the terms, the Commission concludes that you may make the proposed draws for the purposes of your House campaign from the entities that qualify as depository institutions under 11 CFR 100.7(b)(11)).[2/]

One of these lines is with NationsBank of Texas, which is a national bank and an FDIC-insured depository. Another line is labelled Citibank Ready Credit and is from Citibank itself, which is also a national bank and FDIC insured. The third line provider, Security Pacific Executive/Professional Services is a BankAmerica Company and a division of the BankAmerica Corporation, which owns banks and other subsidiaries. It is an operating arm of the BankAmerica Corporation that extends lines of credit. From the information received, it does not appear that Security Pacific Executive/Professional Services is a qualified depository institution. The Commission concludes that you may use the lines of credit from the first two institutions.

Commission regulations set out specific rules for the reporting of bank loans received for Federal campaign purposes, including lines of credit. They require that, when a candidate or political committee obtains a loan, or establishes a line of credit, the committee should make several detailed disclosures on Schedule C-1: (i) the date and amount of the loan or line of credit; (ii) the interest rate and repayment schedule of the loan or each draw on the line of credit; (iii) the types and value of traditional collateral or other sources of repayment securing the loan or line of credit described in 11 CFR 100.7(b)(11)(i)(A) or (B), and whether that security interest is perfected; and (iv) an explanation of the basis of the credit established if the bases in (iii) are not applicable. 11 CFR 104.3(d)(1)(i)- (iv). Since the lines of credit at issue were not obtained for campaign purposes, your committee need not disclose the foregoing information for a line until the reporting period during which the line is first drawn upon for campaign purposes. At that point, the committee must disclose the source of the line and the information required in subsections (i) [including the date of the granting of the line and the first campaign draw], (ii), and (iv) cited above. You should also explain that this line was taken out well in advance of the campaign (as evidenced by the date of the granting of the line) and was not granted or altered in anticipation of its use for or during any political campaign.[3/]

Section 104.3(d)(1)(v) requires a certification from the lending institution that the borrower's responses to (i)-(iv) are accurate to the best of the lender's knowledge, that the loan or line of credit was made or established on terms and conditions no more favorable at the time than those imposed for similar credit granted to borrowers of comparable credit worthiness, and that the institution is aware of the requirement for terms which assure repayment. Since the lending institution was not extending a line of credit for campaign purposes at the time the line was established, the lending institutions do not need to comply with this subsection. At the time the lines were established, you and the lender presumably would not have contemplated the possibility that you would draw upon the lines for campaign purposes, or that the requirements of the Act and regulations would govern the issuance of the line of credit.

Commission regulations require the political committee to submit a copy of the line of credit agreement which describes the terms and conditions of the line when it files the Schedule C-1 that first discloses draws made against the line for campaign purposes. You should file either the original agreement, with any up-to-date amendments, or the most recent document containing all the terms (e.g., interest rates, repayment, time requirements) that are applicable at the time of the draw. 11 CFR 104.3(d)(2).

There are continuous reporting requirements in connection with the draws. Each time an additional draw is made on a line of credit, this should be reported on Schedule C-1 and on Schedules A and C. Assuming that the terms of the line remain unchanged, the committee need not proceed through all the requirements of 11 CFR 104.3(d)(1) cited above for each draw, but should include the source of the draw and a notation as to when the source was first disclosed, the amount of the draw, and the total outstanding balance on the line. 11 CFR 104.3(d)(3). For each reporting period in which there is still a balance to be paid on the line of credit, the line should continue to be reported. The Schedule C should indicate the total drawn, the total repaid, and the remaining balance. 2 U.S.C. 434(b)(8); 11 CFR 104.3(d) and 104.11(a). Advisory Opinion 1985-33. In addition, each time the interest rate or other repayment term for the line is altered because of the bank's alteration of its standard agreement with its line of credit customers, a Schedule C-1 should be filed for that reporting period. See 11 CFR 104.3(d)(1)(ii).[4/]

Repayments of the draws on these lines of credit must originate from contributions that are permissible under the Act. 11 CFR 110.1(g). Advisory Opinions 1987-30 and 1981-22. If the repayment to the bank comes from you, your committee must report your payments to the bank as in-kind contributions to the committee. This would entail disclosing a contribution from you on Schedule A, an expenditure to the lender on Schedule B, and the reduction of the amount owed on Schedule C. Your contribution from your personal funds would not be subject to the Act's limits. 11 CFR 110.10(a). Any donations you receive for the purpose of remitting funds to the lender would be contributions subject to the limits and prohibitions in the Act. See 2 U.S.C. 441a, 441b, 441c, 441e, and 441f.

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.

For the Commission,

(signed)

Trevor Potter
Chairman

Enclosures (AO 1987-30, 1985-33, and 1981-22)

ENDNOTES

1/ When a candidate receives a loan for use in connection with his or her campaign, the candidate receives the loan as an agent of his or her authorized committee. 2 U.S.C. 432(e)(2); 11 CFR 101.2 and 102.7(d). Such loans are reportable by the committee and itemizable as loans from the lender to the committee, rather than as loans from the candidate to the committee. 2 U.S.C. 434(b)(3)(E); 11 CFR 104.3(a)(3)(vii)(B) and 104.3(a)(4)(iv). Advisory Opinion 1985-33.

2/ Commission regulations provide that a candidate may make unlimited expenditures for his or her campaign from personal funds. 11 CFR 110.10(a). Although the availability of funds from a line of credit, an availability that the bank (which still holds and controls the funds) may withdraw for a number of reasons, does not meet the definition of personal funds under Commission regulations at 11 CFR 110.10(b), the funds are at least as accessible to the candidate as "gifts of a personal nature which had been customarily received prior to candidacy." 11 CFR 110.10(b)(2).

3/ The draws should also be disclosed as a loan guaranteed by the candidate on Schedule A [line 13(a) of the Detailed Summary Page] and Schedule C. 11 CFR 104.3(a)(3)(vii)(B) and (4)(iv).

4/ The Commission notes that the above analysis as to the use and reporting of lines of credit issued by banks is not intended to address the use of charge or credit card accounts, or checks drawn on credit card accounts.