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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 26 4 17 PM '95

June 26, 1995

**SUBMITTED LATE
AGENDA ITEM**

For Meeting of: JUN 29 1995

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael G. Marinelli
Staff Attorney

SUBJECT: Revised Draft AO 1995-20

Attached is a revised draft of the subject advisory opinion. The revisions are made to the draft previously circulated to the Commission as Agenda Document #95-68 for the agenda of June 29, 1995.

The revisions are highlighted with the bold feature and are underlined. They cover only the new factual circumstances presented in the sixth paragraph of Representative Roemer's letter dated June 22, 1995. The paragraph states that, on some trips back to his district (Indiana), his children will be directly involved in campaign activities. For example, sitting for photographs to be used in campaign mailings and attending political events, such as picnics.

The revision on page 4 has a new conclusion allowing the use of campaign funds for trips where the 2 year old is scheduled to be included in a prescheduled campaign event with either of his parents.

Memorandum to the Commission

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The other portions of the June 22 letter present advocacy and argumentation in opposition to the draft opinion proposed by the Office of General Counsel. This office will address those points in the discussion on Thursday.

We request that this revised draft be placed on the June 29 agenda and be considered instead of Agenda Document #95-68.

Attachment

1
2
3 ADVISORY OPINION 1995-20

DRAFT

4 The Honorable Tim Roemer
5 Hoosiers for Tim Roemer
6 P.O. Box 4400
7 South Bend, Indiana 46634

8 Dear Mr. Roemer:

9 This refers to your two letters dated June 22 and May
10 24, 1995, concerning the application of the Federal Election
11 Campaign Act of 1971, as amended ("the Act"), to the use of
12 campaign funds for the travel-related expenses for your
13 two-year old son.

14 Hoosiers for Tim Roemer ("the Committee") is your
15 principal campaign committee. You state that your wife
16 serves as your senior campaign advisor and is an integral
17 part of your campaign team. Several times a year, she
18 accompanies you back to your district in Indiana where she is
19 directly involved in campaign-related activities. You state
20 that you have two small children, one age two and the other
21 ten months. You state that because of their ages, you feel
22 it is necessary for the children to accompany you and your
23 wife when you travel to Indiana on campaign-related business
24 "even though they are not directly involved in campaign
25 activities." Your June 22 letter further explains that
26 "there are times when my children will be directly involved
27 in campaign-related activities. For example, they will
28 accompany my wife and me to Indiana when we take the
29 photographs for our family Christmas card and for
30 campaign-related mailings. I also plan to have my children

3 with me when I attend certain political events such as
4 picnics." You further state that because the oldest child is
5 two, you are obligated to purchase an airline ticket for him.
6 You ask, in light of the new regulations regarding the
7 personal use of campaign funds, if it is permissible for your
8 committee to use campaign funds to pay for your two-year old
9 son's ticket.^{1/}

10 Under the Act and new Commission regulations, a
11 candidate and the candidate's campaign committee have wide
12 discretion in making expenditures to influence the
13 candidate's election, but may not convert excess campaign
14 funds to personal use. 2 U.S.C. §§431(9) and 439a; 11 CFR
15 113.1(g) and 113.2.

16 The Commission's revised regulations provide guidance
17 regarding what would be considered personal use of campaign
18 funds. Personal use is defined as "any use of funds in a
19 campaign account of a present or former candidate to fulfill
20 a commitment, obligation or expense² of any person that would
21 exist irrespective of the candidate's campaign or duties as a
22 Federal officeholder." 11 CFR 113.1(g).

23 Travel expenses are not listed among those expenditures
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28 ^{1/} The relevant regulations were published in the Federal
29 Register on February 9, 1995, (60 Fed. Reg. 7862) with an
30 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.

3 that would be considered per se personal use.^{2/} The
4 regulations state that the Commission will determine on a
5 case by case basis whether uses of funds in a campaign
6 account for travel purposes would fulfill a commitment,
7 obligation or expense that would exist irrespective of the
8 candidate's campaign or duties as a Federal officeholder,
9 and, therefore, would be personal use. 11 CFR
10 113.1(g)(1)(ii). If a committee uses campaign funds to pay
11 expenses associated with travel that involves both personal
12 activities and campaign related activities, the incremental
13 expenses that result from the personal activities are
14 personal use, unless any person benefiting from this use
15 reimburses the campaign account within thirty days for the
16 amount of the incremental expenses.

17 You have stated that your wife is your senior campaign
18 advisor and will be traveling to your home district to be
19 directly involved in campaign related activities. Using the
20 standard established by section 113.1(g)(1)(ii), her travel
21 expenses are clearly attributable to her participation in
22 your campaign for re-election. Therefore, campaign funds
23 could be used to pay for your wife's travel.

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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 The situation regarding your children is different. You
4 state that, with respect to some trips, your children are not
5 directly involved in campaign activities. However, you state
6 that it is necessary that the children be with you and your
7 wife because of their ages. The Commission notes that the
8 need to provide special care and attention for your infant
9 children would exist irrespective of your campaign
10 responsibilities or your duties as a Federal officeholder.
11 Providing for child care when a parent is unavailable for
12 business travel reasons is a concern for most families,
13 regardless of profession. The expenses for such care cannot
14 be said to be specially related to your campaign. Therefore,
15 with respect to those trips when your two year old son is not
16 directly involved in campaign activities, the Commission
17 concludes that the use of campaign funds to pay for his
18 airfare would constitute personal use under 2 U.S.C. §439a
19 and 11 CFR 113.1(g).^{3/} Thus, your campaign funds may not be
20 used for this expense.

21 By contrast, when your two year old son accompanies you
22 and your wife on a trip that includes any prescheduled
23 campaign event which includes him, the cost of his airfare
24 for that trip will be regarded as a campaign expenditure, and
25 not as a personal use of campaign funds. Accordingly, it may
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28 ^{3/} Your request cites the possible application of 11 CFR
29 113.2 to your situation. However, that provision pertains to
30 the use of funds for travel that is "ordinary and necessary"
in connection with an individual's duties as a holder of
Federal office. Your inquiry describes only campaign related
travel; therefore, section 113.2 does not apply.

3 be paid by the Committee from campaign funds and should be
4 reported as an operating expenditure. See 11 CFR 104.3(b)(2)
5 and (b)(4)(i).

6 This response constitutes an advisory opinion concerning
7 application of the Act, or regulations prescribed by the
8 Commission, to the specific transaction or activity set forth
9 in your request. See 2 U.S.C. §437f.

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11 Sincerely,

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13 Danny L. McDonald
Chairman
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