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FEDERAL ELECTION COMMISSION

Washington, DC 20463

October 31, 1996

AGENDA ITEM
For Meeting of: **NOV 7 1996**

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan M. Levin
Senior Attorney

Subject: Draft AO 1996-45

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for November 7, 1996.

Attachment

DRAFT

1 ADVISORY OPINION 1996-45

2
3 The Honorable Lucille Roybal-Allard
4 U.S. House of Representatives
5 Washington, D.C. 20515
6

7 Dear Ms. Roybal-Allard:

8 This responds to your letter dated October 9, 1996, and a supplementary staff
9 memorandum dated October 10, requesting an advisory opinion concerning the
10 application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and
11 Commission regulations to the use of campaign funds for a seminar on
12 racial and ethnic relations.

13 You are a Member of Congress from the Thirty-third District of California. On
14 November 25 and 26, you will host a special seminar in your congressional district. You
15 intend to invite members of your staff and representatives of non-profit, community
16 based organizations and city agencies from your congressional district to participate. The
17 seminar "will focus on ways in which participants can become more sensitive and
18 responsive to persons from different racial and ethnic backgrounds" and will "identify
19 ways in which people from different backgrounds can work more effectively and
20 cooperatively in promoting racial and ethnic harmony." You believe that the seminar will
21 be particularly beneficial to the non-profit organizations and city agencies because of the
22 demographic diversity of their clientele in southern California.

23 The seminar will be offered to the participants at no charge. It will probably be
24 held in a conference room donated by one of the cities in the district. The speakers or
25 consultants who will lead the seminar are offering their services free of charge if
26 transportation and lodging are made available. Invitations will be extended by your
27 congressional staff members on their own volunteer time, and there will be no use of your
28 official congressional resources. You state that there are no other expenses to be incurred
29 in connection with the seminar.

30 You state that the seminar is being offered as a community service and that you
31 will be hosting the event in your "official capacity as a Member of Congress." You note
32 that the seminar will be offered after the November election and assert that it will not be

1 used "as a forum to highlight [your] re-election campaign." You ask whether you may
2 use the funds of your principal campaign committee, Lucille Roybal-Allard for Congress
3 ("the Committee"), to pay for the transportation and hotel accommodation expenses of
4 the consultants who will lead the seminar.

5 Under the Act and Commission regulations, a candidate's excess campaign funds
6 may be not be converted to the personal use of the candidate or any other person. 2
7 U.S.C. §439a; 11 CFR 113.2(d).¹ A specific exemption to the ban on personal use,
8 however, permits the use of campaign funds to defray any ordinary and necessary
9 expenses incurred in connection with a person's duties as a holder of Federal office. 2
10 U.S.C. §439a; 11 CFR 113.2(a) and (d). In addition, Commission regulations define
11 personal use as "any use of funds in a campaign account of a present or former candidate
12 to fulfill a commitment, obligation, or expense of any person that would exist irrespective
13 of the candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g).

14 Commission regulations list a number of purposes that would constitute personal
15 use. 11 CFR 113.1(g)(1)(i). Where a specific use is not listed as personal use, the
16 Commission makes a determination on a case-by-case basis. 11 CFR 113.1(g)(1)(ii).
17 Travel expenses, including subsistence expenses incurred during travel, are among those
18 expenses to be analyzed on a case-by-case basis. If such travel involves both personal
19 activities and campaign or officeholder-related activities, the incremental expenses that
20 result from personal activities are personal use unless the person benefiting reimburses
21 the campaign within thirty days for the amount of those expenses. 11 CFR
22 113.1(g)(1)(ii)(C).

23 In view of the community service nature of the seminar, the fact that it will be
24 held in your congressional district within 30 days after the 1996 general election, and its
25 direct relationship to public policy matters that are of concern to Members of Congress,
26 the proposed event is connected to your duties as a Federal officeholder. See Advisory

¹ Commission regulations define the phrase "excess campaign funds" to mean "amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures." 11 CFR 113.1(e).

1 Opinions 1994-15 and 1981-37.² The use of funds to pay the travel and hotel costs of the
2 speakers is an ordinary and necessary expense related to the conduct of the seminar.
3 Therefore, the Committee's funds may be used for this purpose. The Commission
4 assumes that campaign funds will be expended only for the consultants' travel expenses
5 directly connected with the seminar and not for expenses incurred by them that are
6 unrelated to seminar travel or to their subsistence during the seminar. For example, the
7 Committee will presumably not pay the costs of a speaker's hotel lodging for more than
8 three days or the costs of side trips for non-seminar purposes. See Advisory Opinion
9 1996-19.

10 In view of the fact that the Committee's disbursements for the proposed
11 Committee expenses are not campaign-related, they should be reported as "other
12 disbursements," with the purpose of the disbursements noted. 11 CFR 104.3(b)(2)(vi) and
13 (4)(vi). See Advisory Opinion 1996-14 (entailing use of excess campaign funds for
14 moving expenses of retiring member).

15 The Commission expresses no opinion regarding the application of any rules of
16 the U.S. House of Representatives or any tax ramifications of the proposed activity
17 because those issues are not within its jurisdiction.

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

21 Sincerely,

22
23 Lee Ann Elliott
24 Chairman
25

26 Enclosures (AOs 1996-19, 1996-14, 1994-15, 1992-5, 1981-37, and 1980-89)
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28
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² These opinions characterize certain activities conducted by Members of Congress as related to officeholder duties rather than as campaign-related. See also Advisory Opinions 1992-5 and 1980-89.