

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRET

FEB 28 4 19 PM '01



FEDERAL ELECTION COMMISSION
Washington, DC 20463


February 28, 2001


MEMORANDUM


AGENDA ITEM

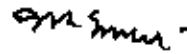
For Meeting of: 3-08-01

TO: The Commission

THROUGH: James A. Pehrkon 
Staff Director

FROM: Lois G. Lerner 
Acting General Counsel

N. Bradley Litchfield 
Associate General Counsel

Michael G. Marinelli 
Staff Attorney

SUBJECT: Draft AO 2001-03

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for March 8, 2001.

Attachment

1 ADVISORY OPINION 2001-03

2
3 The Honorable Gregory W. Meeks
4 United States House of Representatives
5 1710 Longworth House Office Building
6 Washington, DC 20515-3206

DRAFT

7
8 Dear Mr. Meeks:

9
10 This refers to your letters dated February 2, 2001, and October 20, 2000, which
11 request an advisory opinion concerning application of the Federal Election Campaign Act
12 of 1971, as amended ("the Act"), and Commission regulations to the use of campaign
13 funds by Meeks for Congress ("the Committee"), your principal campaign committee, to
14 purchase an automobile.

15 You purpose to use Committee funds to purchase an automobile that "would be
16 used primarily to transport" you and members of your campaign staff "to political and
17 campaign related events in the Washington DC metropolitan area." The automobile will
18 be titled in the name of the Committee in the State of Maryland (Prince Georges County),
19 and the Committee will pay the insurance expenses.¹

20 You explain further "that occasionally this automobile may be used in support of
21 the conduct of my official and representational duties and/or for personal purposes." You
22 estimate that the total annual mileage for the vehicle would be 6,000 miles and that the
23 estimated portion that would be campaign related is 95%. The 95% is meant to reflect
24 the fact that you may use the vehicle to transport yourself to your place of residence in

¹ You identify the authorized and insured drivers for the vehicle as yourself, Simone Marie Meeks (your wife), and an unnamed campaign staff/volunteer. The estimated percentage of vehicle use by you is between 85% to 100%. You estimate your wife's use at 3% or less and the use by a campaign staff member or volunteer at 15% to 20%. You also explain that, when not in use, the car will be parked or garaged in the Capitol Hill area.

1 situations which require your late attendance at a campaign or political function and
2 which do not require that a campaign volunteer stay with you.² However, you assert that
3 the primary purpose of the car would not be used for transport between your residence
4 and place of business, or for personal use.³ You affirm that the purchase of this vehicle
5 will not precede or follow the sale or disposition of another vehicle owned or primarily
6 used by you or any member of your family, and that the vehicle is not a substitute for any
7 personal vehicle.

8 You state that when the use is for the described official or personal purposes, you
9 propose "to personally reimburse" the Committee. The amount of the reimbursement
10 would be based on travel records that document the mileage for purposes other than
11 political or campaign related trips. In addition, you propose that the reimbursement to the
12 Committee would be on a rate per mile basis and would conform to the "IRS standard
13 mileage rate (currently \$.325)." You ask whether this arrangement is permissible under
14 the Act and Commission regulations.

15 ***ACT AND COMMISSION REGULATIONS***

16 Under the Act and Commission regulations, a candidate and the candidate's
17 committee have wide discretion in making expenditures to influence the candidate's
18 election, but may not convert excess campaign funds to the personal use of the candidate
19 or any other person. 2 U.S.C. §§431(9) and 439a; 11 CFR 113.1(g) and 113.2(d); *see*
20 *also* Advisory Opinions 2000-40, 2000-37, 2000-12, 1998-1, and 1997-11.

² You define political event in the context of campaign events for your Federal candidacy or the candidacy of others. It also includes PAC events, DCCC events and DNC events and political fund-raisers.

³ You explain that, between four to five times a year, you may also use the car for travel between Washington DC and your Congressional district in New York to attend district political and campaign events or activities.

1 Commission regulations provide guidance regarding what would be considered
2 personal use of campaign funds. Personal use is defined as “any use of funds in a
3 campaign account of a present or former candidate to fulfill a commitment, obligation or
4 expense of any person that would exist irrespective of the candidate’s campaign or duties
5 as a Federal officeholder.” 11 CFR 113.1(g). Moreover, 2 U.S.C. §439a and 11 CFR
6 113.2(a) specifically provide that excess campaign funds may be used to pay any ordinary
7 and necessary expenses incurred in connection with one’s duties as a holder of Federal
8 office.

9 Commission regulations list a number of purposes that would constitute personal
10 use *per se*. 11 CFR 113.1(g)(1)(i). Where a specific use is not listed as personal use, the
11 Commission makes a determination, on a case-by-case basis, whether an expense would
12 fall within the regulation’s definition of personal use. 11 CFR 113.1(g), 113.1(g)(1)(ii).
13 The regulations specifically list certain examples of expenses subject to a case-by-case
14 analysis, including vehicle expenses. *Id.* Commission regulations further provide that
15 any use of funds that would be personal use under 11 CFR 113.1(g)(1) will not be
16 considered an ordinary and necessary expense in connection with the duties of a Federal
17 officeholder. 11 CFR 113.1(g)(5).

18 In defining what constitutes personal use, vehicle expenses, unless they are a *de*
19 *minimis* amount, are among those specifically listed examples to be analyzed on a case-
20 by-case basis. 11 CFR 113.1(g)(1)(ii)(D). If a committee uses campaign funds to pay
21 expenses associated with a vehicle that is used for both personal activities beyond a *de*
22 *minimis* amount and campaign or officeholder related activities, the portion of the vehicle
23 expenses associated with the personal activities is personal use, unless the person(s) using

1 the vehicle for personal activities reimburse(s) the campaign account within thirty days
2 for the expenses associated with the personal activities. *Id.*

3 **APPLICATION TO PROPOSAL**
4

5 The Commission concludes that your proposal is permissible under the Act and
6 Commission regulations.⁴ The facts presented in your request establish that the primary
7 use of the vehicle the Committee wishes to purchase would be for campaign related, and
8 not personal purposes. To document the campaign use and non-campaign use, a mileage
9 log that is updated with each use of the car should be maintained and retained as part of
10 the Committee's accounting records. *See* 11 CFR 102.9(b)(1). The Commission, in
11 particular, notes the Committee ownership of the vehicle and the 95% proportion of
12 mileage use for campaign related purposes. The 5% percentage of use, which you
13 represent would fall outside campaign related purposes, is *de minimis* and would require
14 no reimbursement. However, you have indicated that you will reimburse the Committee
15 for any non-campaign related use.⁵ The rate of reimbursement you offer, again while not
16 required, is reasonable. The Commission, however, notes that this opinion is limited to
17 the circumstances you have presented here, where the personal use of the vehicle
18 purchased with campaign funds is *de minimis* or less. This opinion does not address

⁴ Prior to the 1995 adoption of its regulations on personal use, the Commission had permitted campaign committees to purchase vehicles for campaign use. *See* Advisory Opinions 1992-12 and 1987-2. The Commission had also permitted the purchase specifically where the candidate proposed to make reimbursed personal use of the vehicle. Advisory Opinion 1992-12.

⁵ The Commission notes your statement that you will reimburse the Committee for all non-campaign related purposes, including use that relates to your "representational duties." While your arrangement is permissible, section 113(g)(1)(i)(D) expressly excludes from the definition of personal use, vehicle expenses that would relate to Federal officeholder activities. To the extent that your representational duties would fall into this category you would not be required, under the Act or Commission regulations, to reimburse the Committee.

1 situations where a vehicle is purchased with campaign funds and is used beyond a *de*
2 *minimis* level for personal purposes.

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

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

9 Sincerely,

10
11 Danny L. McDonald
12 Chairman

13
14 Enclosures (AOs 2000-40, 2000-37, 2000-12, 1998-1, 1997-11, 1992-12, and
15 1987-2)
16
17
18