

## INTERPRETATIVE RULING NO. 444

Date issued: February 14, 2002

Applicable Rule: 38

### **QUESTION PRESENTED:**

How may Senate offices comply with Rule 38 which incorporates the provisions of Section 311(d) of the Legislative Appropriations Act of 1991 as amended by the Legislative Branch Appropriations Act of 2002?

### **APPLICABLE RULE:**

Section 311(d) of the FY1991 Legislative Branch Appropriations Act (the 1991 Act), adopted as Section 1(b) of Rule 38, as amended by the FY2002 Legislative Branch Appropriations Act (the 2002 Act) provides that official expenses for franked mail, employee salaries, office space, or equipment and any associated information technology services (excluding handheld communications devices) may not be paid from excess campaign funds or reimbursements provided by non-Senate sources.

2 U.S.C. 439a provides that excess campaign funds may be used "...to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office..."

Section 1(a) of Rule 38 provides that expenses in connection with official duties may be paid from one of four sources:

- 1) a Member's personal funds,
- 2) appropriated funds,
- 3) excess campaign funds, or
- 4) reimbursements from private parties for which some service is performed (examples: fact-finding travel, or expenses in connection with giving a speech).

### **DISCUSSION:**

Prior to 1992, Rule 38 allowed Members to pay for expenses which were related to their official duties from campaign funds provided by their principal campaign committees. It also allowed Members to accept reimbursements from private parties when they participated in an event sponsored by that party. This system allowed Members to engage in many worthwhile activities without such participation resulting in an expense to the taxpayers. At the same time, the system provided for accountability by requiring that expenditures from campaign funds and reimbursements accepted be publicly disclosed. This system functioned well from 1977 until 1992. From 1992 until now, Section 311(d) of the 1991 Act prohibited the use of campaign funds to pay official expenses, and Interpretative Ruling 442 implemented this prohibition by dividing expenses related to official duties into two distinct categories: official and officially connected. Section 311(d) of the 1991 Act was amended by the 2002 Act so that the categorization of expenses related to the performance of official duties is no longer needed. This

will permit the Senate to return to the expense payment system in effect prior to 1992, so far as it is consistent with the amended statute.

**RULING:**

Based upon the amended Section 311(d), Interpretative Ruling 442 (issued 4/15/92) is hereby withdrawn. Compliance with Senate Rule 38 will be governed by this ruling for expenses incurred in relation to official duties on or after the date of this ruling.

General Principles

As amended by the 2002 Act, Section 311(d) of the 1991 Act, incorporated into section 1(b) of Senate Rule 38, prohibits the use of excess principal campaign committee and other non-Senate funds to pay official expenses for franked mail, employee salaries, office space, or equipment and any associated information technology services (excluding handheld communications devices).

The restrictions of Senate Rule 38(1)(a) and (b) are applicable to individual Senators, Party Conferences, and caucuses. Thus, individual Senators, Party Conferences, and caucuses may not accept financial or in-kind contributions from third parties, except as allowed in Rule 38.

Expenses of Standing, Select, and Special Senate Committees are paid only from appropriated Senate funds.

The acceptance of in-kind goods and services is prohibited to the same extent that acceptance of funds to be used to purchase goods or services is prohibited.

Wherever in this ruling funds of a principal campaign committee are permitted to be used to purchase an item, then principal campaign committee funds must also be used to maintain, repair, operate, or use the item; and no appropriated Senate funds may be used in the purchase, maintenance, repair, operation, or use of the item, nor may appropriated Senate funds be used to repay or reimburse the campaign committee for the purchase, maintenance, repair, operation or use of the item. Funds of a multi-candidate, party, or any campaign committee other than a Senator's principal campaign committee may not be used to pay an expense related to official duties.

Franking Expenses

Of particular concern when Section 311(d) was adopted in 1990 was the fact that Senators had been allowed to supplement their franking allowance with campaign funds, something House Members were not allowed to do, so the 1991 Act prohibited the supplementation of franking allowances from any source. Appropriations statutes and Section 311(d) as amended by the 2002 Act, continue to prohibit a Senator from supplementing his or her official Senate allowances for franked mail with funds from any source other than appropriated Senate funds. Pursuant to Senate Resolution and Regulations of the Committee on Rules and Administration, all mass mailings under the frank by Senate offices must be printed, prepared, and mailed by the Senate Service Department, and pursuant to appropriations statutes mass mailing funds are limited (*e.g.*

the FY2002 limit is up to \$50,000 per year per Senator's office). See also, Related Matters, Official Mail, Other Than Mass Mailings, below.

#### Expenses for Senate Employees

Senate employees may be compensated only with appropriated Senate funds or the personal funds of a Senator.

The compensation of employees with personal funds may raise significant complications. For example, if an employee is compensated in whole or in part from the personal funds of a Senator, the Senator is responsible for complying with all laws, regulations, etc. with respect to such compensation, such as income tax and FICA withholding, unemployment compensation insurance payments, and workman's compensation. Additionally, such employees are subject to Senate Rule 41.4 and the payments they receive must be reported pursuant to Senate Rule 41.6. Further, any payment from the Senator's personal funds which compensates an employee for performing Senate duties is deemed to come from the Senate and must be counted in determining the applicability to the employee of those provisions of the Senate Code of Official Conduct which apply to employees compensated at or above certain rates of pay (e.g. Financial Disclosure (Rule 34) and two provisions of the Conflicts of Interest Rule, 37.5 and 37.6). Benefits provided by the Senate, such as life insurance, health insurance, and retirement, will be based on only the compensation paid by Senate funds. Campaign funds or other third party funds may not be used to compensate Senate employees for the performance of official Senate duties. However, a Senate employee may be paid by a campaign for campaign activity. Such campaign activity must be conducted on the employee's own time and without the use of Senate facilities or equipment.

#### Expenses for Office Space

Only appropriated Senate funds may be used to provide space for Senate offices.

#### Equipment Expenses

##### *General Rule*

With the limited exception of handheld communications devices and any associated information technology services discussed below, equipment used in the performance of official duties may be purchased, leased, or otherwise acquired or provided only with appropriated Senate funds. Therefore, no other source of funds may be used to provide equipment used in the performance of official duties, and Members may not accept equipment or loans of equipment from any third party, including any campaign.

##### *Limited Exception*

Prior to the 2002 Act's amendment of Section 311(d), the 1991 Act prohibited a Senator from using equipment purchased with campaign funds for any official activity. A Senator also has been (and continues to be) prohibited by the appropriations statutes from using equipment purchased with appropriated Senate funds for any purpose related to a campaign. Thus, a Senator seeking the convenience of a cellphone has suffered the paradoxical inconvenience of sometimes having to carry duplicate if not triplicate cellphones (Senate, campaign, and personal

phones) to comply with the rules.

To address this problem, section 311(b) as amended by the 2002 Act, would permit handheld communications devices and associated information technology services to be provided with funds other than appropriated Senate funds. Likewise, Section 1(a)(1) and(3) of Senate Rule 38 permits expenses related to the performance of official duties to be defrayed from funds of a Senator s principal campaign committee. Thus, in concert the law and rule now permit a Senator to use his or her principal campaign committee funds to purchase handheld communications devices and associated information technology services, and use such devices for official and campaign purposes.

The purpose of the exception in the amended statute was to provide Senate Members and employees with the convenience of using a single cellular telephone or personal digital assistant for multiple purposes (official and campaign), at no cost to the taxpayer, without unduly intruding into the Senate s role in providing equipment for Senate duties. To come within the exception, the purchase, maintenance, repair, operation, and use of a multi-purpose handheld device and its associated information technology service must be paid with funds of a Senator s principal campaign committee, and no appropriated Senate funds may be used for these purposes either directly or to repay or reimburse the campaign committee.

A handheld communications device includes devices such as cellular telephones and handheld personal digital assistants, but does not include laptop computers. An associated information technology service means the communications network access service used by the device, whether such access is provided by land-line, satellite, microwave, or other means.

Any handheld communications device and its associated information technology service provided with funds of a Senator s principal campaign committee and used by a Senate Member, officer, or employee in connection with official duties will be deemed to have been dedicated exclusively to multi-purpose (*i.e.* official and campaign) use pursuant to the authority of Section 311(d) and Senate Rule 38 and is subject to the following restrictions related to its use:

- 1) Under no circumstances may such a device be used in connection with any campaign activity while the device is located in the Capitol or Senate space;
- 2) Under no circumstances may such a device be used to transfer data or information to any computer facility outside the Senate in violation of Senate Rule 40 paragraph 5;
- 3) Under no circumstances may any Senate data or information which has been transferred to such a device be used for any purpose other than official Senate duties; and,
- 4) A Senate Member or employee must maintain personal control over such a device so that the device is not used by any non-Senate individual for campaign purposes even if operated outside the Capitol and Senate space.

Senate Members and employees are reminded to exercise special care to avoid disclosure of confidential information related to the performance of Senate duties, as such devices will operate outside the protective firewall of the Senate Computer Center so that confidentiality and security

are not insured.

A Senator's personal funds may also be used to purchase, maintain, repair, and operate a handheld communications device and its associated information technology service subject to the limitations and conditions in this section.

As noted in the section on General Principles, expenses of Standing, Select, and Special Senate Committees are paid only from appropriated Senate funds. Thus, the limited exception herein for handheld communications devices and associated information technology services provided with funds of a Senator's principal campaign committee or a Senator's personal funds would not be available to Committee staff. See, Related Matters, below, for a discussion of *Senate Employee de minimis Expenses*.

#### Other Official Expenses

For expenses other than those enumerated in Section 311(d) as amended by the 2002 Act as discussed above, and unless otherwise prohibited by law or by other applicable rules or regulations, if an expense is deemed by a Senator to be related to official duties then the expense may be paid with either Senate funds, the Senator's personal funds, or excess funds of the Senator's principal campaign committee. See, Senate Rule 38, paragraph 1(a)(1), (2), & (3).

#### Integrity of Accounts

There can be no supplementation of a Senator's official personnel and office expense account. This account, administered by the Financial Clerk of the Senate, may contain only those funds appropriated to the account by the Senate.

At the discretion of a Senator, a separate operating account may be established by the Senator at a financial institution for the receipt of funds from those sources enumerated in paragraph 1(a) of Senate Rule 38 as authorized by this ruling, for use in or as reimbursement for paying an expense related to official duties. For expenses authorized by this ruling, such enumerated sources may also directly pay the vendor for an expense related to official duties. A lump-sum transfer of campaign funds to an operating account, and an itemization of any expenses paid therewith, must be included on a Senator's annual financial disclosure report. Use of campaign funds for direct vendor payment, or for itemized reimbursement of the operating account for an expense payment, would be disclosed at the Federal Election Commission and would not need to be disclosed a second time on a Senator's annual financial disclosure report. Under current practice, the Senate will not accept payment from a campaign committee for goods or services provided through the Senate.

Where an expense related to official duties is permitted by this ruling to be paid with funds of a Senator's principal campaign committee, under no circumstances may appropriated Senate funds be used to repay or reimburse the principal campaign committee for the expense.

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## Related Matters

### *Cosponsored Constituent Service Events*

A Senator may participate in official constituent service events cosponsored with public or private entities from outside the Senate, but must do so in compliance with other Senate Rules (e.g. Rule 40, paragraph 5), applicable Committee rulings (e.g. Interpretative Ruling 428) and Regulations of the Committee on Rules and Administration. As the name implies, a constituent service event must have as its purpose providing information or some other service to constituents, and may not be simply a gathering of representatives of those sponsoring the event. Moreover, a cosponsor should have a common core of interest with the Senator in the subject matter of the event by virtue of the cosponsor's routine business activities, should be able to participate in and attend the event, and may not be a mere financial contributor.

### *Fact-finding Expenses*

The 1991 Act was not intended to change the longstanding practice in both the House and the Senate of paying certain expenses related to official duties from sources other than appropriated funds or the personal funds of a Member. For example, both the House and the Senate historically allow third parties to reimburse for expenses (such as travel expenses) in connection with services provided by a Member, officer or employee of the Congress to that third party. Neither the House nor the Senate interpreted Section 311(d) of the 1991 Act to prohibit such reimbursements and, to the contrary, such practice was expressly recognized and provided for in revisions to each chamber's Gifts Rule adopted after the 1991 Act. Such third party payment of expenses associated with fact finding and similar activities by Senate Members, officers, or employees continues to be permitted by the 2002 Act amendment in accordance with Section 2 of the Senate Gifts Rule (35).

### *Government Entities*

Under Senate Rule 38, Senators may accept limited donations from domestic state and local government entities to defray official expenses if such donations are in compliance with the domestic government's laws and regulations. This provision of Senate Rule 38 permits state or local government entities to cooperate with a Senator in carrying out a specific event or activity, but does not permit a government entity to make a continuing or sustaining contribution to a Senator's office. Government entities may not under any circumstances provide funds or defray expenses for use of the mailing frank, employee salaries, office space, or equipment. A Federal government employee may participate as a fellow in a Senator's personal office or as a detailee to a Senate committee, provided the requirements of other applicable rules and laws are met (e.g. for Committee detailees, specific approval of the Senate Committee on Rules and Administration is required, see Senate Rule 41, paragraph 3; 18 U.S.C. 208; etc.).

### *Interns, Fellows, and Volunteers*

Senators may continue to participate in intern, volunteer, and fellowship programs that are primarily of educational benefit to the interns, volunteers or fellows.

The supervising Senator is responsible for determining if such a program is primarily for the educational benefit of the intern, volunteer, or fellow. Interns, fellows, and volunteers may be provided with travel expenses, lodging, or compensation from programs sponsored by private parties, provided that no conflict of interest arises in violation of Senate rules (See Interpretative Ruling 385) and provided that the Senator does not solicit for such programs and does not receive reports on who contributes to any program established by or for him. University grants or stipends provided to academic interns or fellows, such as professors on sabbatical, are not considered to be contributions to defray official expenses.

Where a participant is paid by or accepts expenses which are primarily funded by, a single company, individual or industry, the participant may not work on issues related to the interest of the individual company or industry providing such funding. The hiring of interns primarily for the benefit of, or primarily to provide assistance to, a Senate office is an official program and all compensation of the interns must be paid only from appropriated Senate funds or personal funds of the Senator.

Where voluntary (gratuitous) service is provided, an appropriate disclaimer must be on file with the Financial Clerk of the Senate. Voluntary (gratuitous) service is service which is not compensated by anyone, and must be primarily for the educational benefit of the volunteer.

#### *Legal Expenses, as Amicus Curiae or as a Party*

The Committee's Legal Expense Trust Fund Regulations allow a Member, without having to establish a Trust Fund, to accept *pro bono* legal services for the purpose of submitting *amicus curiae* briefs. A Member may not, however, join as a party in a law suit in his or her official capacity unless he or she pays a *pro rata* share of the legal expenses and costs. A Member, officer, or employee may accept either funds or *pro bono* legal services as a contribution to a Legal Expense Trust Fund established pursuant to the Committee's Legal Expense Trust Fund Regulations for the payment of legal expenses relating to or arising by virtue of service in or to the Senate.

Senate Resolution 321, agreed to on October 3, 1996, also permits a Senator, without establishing a Legal Expense Trust Fund, but with appropriate disclosure, to accept *pro bono* legal services with respect to a civil action challenging the validity of a Federal statute that expressly authorized a Senator to file the action. See, *Senate Ethics Manual*, Sept. 2000, App. H.

Additionally, Members, officers, or employees may pay legal expenses incurred in connection with their official duties with funds of a Senator's principal campaign committee, but only if such payment is approved by the Ethics Committee.

#### *Meeting Space and Refreshments*

The use of privately owned space to meet with constituents is permitted, provided that the normal practice of the owner is to make such space available to other persons for similar purposes on a similar and non-partisan basis. Other than for refreshments of nominal value provided by

constituent groups in attendance, third parties may not pay for such refreshments at such meetings.

#### *Motor Vehicles*

A vehicle purchased, leased, or otherwise provided with a Senator's principal campaign committee funds may be used for campaign and official use. The maintenance, repair, operation, and use of the vehicle must be paid with funds of the Senator's principal campaign committee, and no appropriated Senate funds may be used to purchase, maintain, repair, operate, or use the vehicle, or to repay or reimburse the campaign committee for such purchase, maintenance, repair, operation, or use.

A vehicle provided by a principal campaign committee may be used for personal use only if the Senator uses personal funds to pay the campaign for such use (see Rule 38.2), and such personal payment should be made on a reasonable basis but must be made at least once each year by determining the proportion of the vehicle's usage attributable to personal use.

#### *Official Mail, Other Than Mass Mailings*

Under no circumstances may a Senator's personal funds or principal campaign committee funds, or third party funds be used to supplement the franked mail allowance of a Senator. Pursuant to Senate Resolution and Regulations of the Committee on Rules and Administration, all mass mailings under the frank by Senate offices must be printed, prepared, and mailed by the Senate Service Department. Postage and other mail costs associated with official non-franked mail may be paid with Senate funds, a Senator's personal funds, or funds of the Senator's principal campaign committee.

For information relating to proper use of the mailing frank see Chapter 7 of the *Senate Ethics Manual*, the Ethics Committee's Regulations Governing The Use Of The Mailing Frank, and Regulations Governing Official Mail adopted by the Committee on Rules and Administration. See also, Franking Expenses, above.

#### *Publications*

Books, magazines, newspapers, and other publications, and subscriptions thereto, may be accepted from the author or the publisher at the discretion of the Senator. However, a Senator may not accept a collection of materials, such as a specialized reporting service or other collections for which updates or inserts are issued periodically.

#### *Radio and Television Studio*

Expenses related to programs produced in or transmitted from the Senate Radio and Television Studios in the Capitol or the radio and television facilities operated by the Party Conferences may be paid: 1) as an official expense with Senate funds, a Senator's personal funds, or (through an operating account established by a Senator) funds of a Senator's principal campaign committee, if produced or transmitted in relation to official duties; 2) by a licensed radio or television



broadcaster, if produced or transmitted at the broadcaster's request; 3) by a tax exempt organization in the case of a public service announcement or other non-solicitation program, if produced or transmitted at the request of such organization; or 4) by a corporate sponsor of a public interest program or other non-commercial, non-promotional, and non-solicitation program, if produced or transmitted at the request of such sponsor.

*Senate Employee de minimis Expenses*

A Senate employee may not pay an official expense, make advance purchases related to his or her performance of official duties, or pay for travel expenses authorized by the Senate travel regulations, unless the employee is repaid in full with funds from a source enumerated in paragraph 1(a) of Senate Rule 38 as authorized by this ruling, except as noted in this paragraph. A Senate officer, or employee may make voluntary *de minimis* expenditures related to the performance of official duties, such as: travel expenses in excess of maximum Senate *per diem*; travel expenses beyond the time limits in paragraph 2 of Senate Rule 35 for approved travel sponsored by a third party; handheld communications equipment and associated information technology services (subject to the restrictions on use, maintenance, repair, and operation discussed above under Equipment Expenses); audio or video equipment for personal use in the office; or local travel expenses. Any item provided on a *de minimis* basis pursuant to this paragraph must be purchased, maintained, repaired, operated, and used with the Senate officer's or employee's personal funds, and no appropriated Senate funds may be used for these purposes, either directly or to repay or reimburse the officer or employee. Under no circumstances may a Senate Member, officer, or employee as a term or condition of employment, directly or indirectly, ask, seek, demand, or require that a Senate employee or prospective Senate employee volunteer or agree to volunteer to pay an expense related to the performance of official duties.

Because a Senate employee is prohibited by criminal law from making a contribution (which includes an advance payment) to his or her supervising Senator's campaign, any employee contemplating an expenditure (typically expenses associated with volunteer work) related to campaign activities should first consult applicable laws and regulations of the Federal Election Commission (including, but not limited to 2 U.S.C. 431; 11 C. F. R. 116.5 (b)).