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By Office of the Commission Secretary at 3:22 pm, Oct 17, 2017



FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 17-45-A
AGENDA ITEM
For meeting of October 26, 2017

October 17, 2017

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS*
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Subject: AO 2017-11 (Gallegly for Congress) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on October 25, 2017.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>

Attachment

1 ADVISORY OPINION 2017-11

2

3 Honorable Elton Gallegly

4 Gallegly for Congress

5 P.O. Box 940001

6 Simi Valley, CA 93094-0001

7

8 Dear Mr. Gallegly:

DRAFT A

9 We are responding to your advisory opinion request concerning the application of the
10 Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission
11 regulations to your proposed use of campaign funds to pay for the repair or replacement of a
12 home security system. The Commission concludes that under the circumstances presented in
13 your request — which include your status as a former Member of Congress, but not a current
14 officeholder or candidate, and a lack of any specific information demonstrating a current need
15 for residential security related to your former position — the use of campaign funds to pay for
16 the proposed repair or replacement of your residential security equipment would constitute a
17 personal use of campaign funds that would be prohibited under the Act and Commission
18 regulations.

19 **Background**

20 The facts presented in this advisory opinion are based on your letter received on
21 September 11, 2017, and your email received on September 19, 2017 (collectively “advisory
22 opinion request” or “AOR”).

23 You were a member of the United States House of Representatives from 1987 to 2013,
24 and you established Gallegly for Congress (the “Committee”) as your principal campaign
25 committee. AOR001. You are no longer an officeholder or candidate, however, the Committee
26 remains active and had \$173,632.99 in cash on hand as of September 30, 2017.¹

¹ See Gallegly for Congress, *FEC Financial Summary of Reported Activity*,

1 In April 2009, while you were serving as a Member of Congress, you requested an
2 advisory opinion from the Commission concerning the use of campaign funds to pay for a
3 security system at your home due to threats that you and your wife had received during your re-
4 election campaign in the fall of 2008. Advisory Opinion 2009-08 (Gallegly for Congress). The
5 Commission concluded, based on the facts you provided, that those threats stemmed from your
6 role as an officeholder and candidate, and, therefore, that campaign funds could be used to pay
7 for the security system without violating the Act’s prohibition on personal use of campaign
8 funds. Advisory Opinion 2009-08 (Gallegly for Congress) at 1.

9 Currently, you are neither a Member of Congress nor a candidate seeking federal office,
10 but you “remain a fairly high profile citizen in [y]our community.” AOR001. On two or more
11 occasions within the past year, your home alarm system was triggered in the middle of the night.
12 AOR001-002. Although you do not know who (or what) triggered the alarm, and no physical
13 evidence was left, you believe a person had approached your home. *Id.* The three cameras and
14 recording system that are part of your home security system are not functioning properly so no
15 visual record of the incidents was captured. AOR001-002. The police were called on each of
16 these occasions but they were unable to determine who or what had approached the house.
17 AOR002.

18 The estimated cost of repairing or replacing the nonfunctioning cameras and recording
19 system is approximately \$2,800–\$3,500. AOR002. You do not propose to add any new
20 equipment to your home security system. *Id.*

1 **Question Presented**

2 *May the Committee's campaign funds be used to pay for the repair or replacement of Mr.*
3 *Gallegly's home security system?*

4 **Legal Analysis and Conclusions**

5 No, the Committee's campaign funds may not be used to pay for the repair or
6 replacement of Mr. Gallegly's home security system, because doing so would constitute an
7 impermissible personal use of campaign funds under the Act and Commission regulations.

8 The Act and Commission regulations identify a variety of permissible uses of
9 contributions accepted by a federal candidate, which include, *inter alia*, ordinary and necessary
10 expenses incurred in connection with the duties of the individual as a holder of federal office,
11 and "any other lawful purpose" not prohibited by 52 U.S.C. § 30114(b). 52 U.S.C. § 30114(a);
12 *see also* 11 C.F.R. § 113.2(a)-(e).

13 The Act and Commission regulations also specify prohibited uses of federal campaign
14 funds. Under 52 U.S.C. § 30114(b), contributions accepted by a candidate may not be converted
15 to "personal use" by any person. 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.2(e). Conversion to
16 personal use occurs when a contribution or amount is used "to fulfill any commitment,
17 obligation, or expense of a person that would exist irrespective of the candidate's election
18 campaign or individual's duties as a holder of [f]ederal office." 52 U.S.C. § 30114(b)(2); *see*
19 *also* 11 C.F.R. § 113.1(g).

20 The Act and Commission regulations provide a non-exhaustive list of items that would
21 constitute personal use *per se*, none of which applies here. *See* 52 U.S.C. § 30114(b)(2)(A)-(I);
22 11 C.F.R. § 113.1(g)(1)(i)(A)-(J). For items not on this list, such as the proposed payment of

1 costs related to a residential security system, the Commission determines on a case-by-case basis
2 whether the expense would fall within the definition of “personal use,” that is, whether the
3 expense would exist irrespective of a candidate’s campaign or an individual’s duties as an
4 officeholder. 11 C.F.R. § 113.1(g)(1)(ii). The Commission has long recognized that if a current
5 officeholder or candidate “can reasonably show that the expenses at issue resulted from
6 campaign or officeholder activities, the Commission will not consider the use to be personal
7 use.” Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed.
8 Reg. 7862, 7867 (Feb. 9, 1995).

9 The Commission has previously concluded that payments for, or improvements to, a
10 residential security system do not constitute personal use under the Act and Commission
11 regulations when the security system or security system upgrades are in response to threats
12 motivated by an individual’s public role as a current federal officeholder and/or candidate. In
13 Advisory Opinion 2011-17 (Giffords for Congress), Advisory Opinion 2011-05 (Terry), and
14 Advisory Opinion 2009-08 (Gallegly for Congress), Members of Congress faced specific and
15 ongoing threats to themselves and their families. The facts presented in those advisory opinions
16 suggested that the threats were motivated by the Members’ public roles as federal officeholders
17 and/or candidates. In all three instances, the United States Capitol Police recommended specific
18 security upgrades to the Members’ residences due to the ongoing nature of the threats. The
19 Commission concluded that the threats would not have occurred had the Members not been
20 federal officeholders or candidates, and that the expenses for the proposed residential security
21 upgrades would not have existed irrespective of their duties as federal officeholders or
22 candidates. The Commission thus concluded that the use of campaign funds to pay for the

1 security upgrades recommended by the Capitol Police in those circumstances would not
2 constitute a prohibited personal use of campaign funds under the Act or Commission regulations.

3 More recently, in Advisory Opinion 2017-07 (Sergeant at Arms), the Commission
4 concluded that due to a “heightened threat environment” affecting current Members of Congress,
5 federal officeholders may, while in office, use campaign funds to pay for certain reasonable costs
6 associated with installing, upgrading, and monitoring security systems at Members’ residences,
7 regardless of whether those officeholders have received specific threats. Advisory Opinion
8 2007-07 (Sergeant at Arms) at 3. The Commission emphasized that its conclusion was based on
9 “the current heightened threat environment” experienced by current officeholders, as assessed by
10 the Capitol Police. *Id.* at 3-4.

11 None of the advisory opinions described above addresses the permissibility of using
12 campaign funds to pay for costs related to a security system at the residence of a *former*
13 candidate or officeholder.² Commission regulations recognize that former officeholders may
14 permissibly use campaign funds to pay certain expenses related to winding down their office.
15 *See* 11 C.F.R. § 113.2(a)(2) (recognizing as “ordinary and necessary” costs of winding down
16 former officeholder’s office and permitting use of campaign funds to pay for such expenses for
17 period of six months after officeholder leaves office). Commission advisory opinions, including
18 one responding to another request from Mr. Gallegly, similarly have recognized that former
19 officeholders may permissibly use campaign funds to pay certain expenses related to winding

² *See* Advisory Opinion 2017-07 (Sergeant at Arms) at 2 n.2, 3 n.3 (explaining that Advisory Opinion 2017-07 (Sergeant at Arms) is “limited to payments by *current* federal officeholders,” and that Advisory Opinion 2011-17 (Giffords for Congress), Advisory Opinion 2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly for Congress) may be relied on by “[c]andidates who are not federal officeholders” in circumstances where the relevant facts are materially indistinguishable from the facts of those advisory opinions (emphases added)).

1 down campaign activity. *See* Advisory Opinion 2013-05 (Gallegly) at 3 (concluding that former
2 officeholder may use campaign funds to pay cost of archiving and storing campaign papers, files,
3 and other materials); Advisory Opinion 1993-06 (Citizens for Congressman Panetta) at 4, 6
4 (concluding that former officeholder may use campaign funds to pay hotel, telephone, and
5 clerical costs of winding-down activities, as well as archival and storage of campaign materials);
6 Advisory Opinion 1996-14 (de la Garza) at 2 (concluding that former officeholder may use
7 campaign funds to pay for transfer of Congressional office furnishings to his home). The
8 proposed payments for a former officeholder's residential security systems, however, are well
9 outside the scope of these winding-down activities.

10 The Commission concludes that the proposed use of campaign funds to pay for the repair
11 or replacement of your residential security equipment would constitute an impermissible
12 personal use of campaign funds. Even setting aside the fact that you are not a current candidate
13 or officeholder, your request indicates that you are not able to identify any particular facts
14 suggesting a security threat related to your status as a former officeholder. Your proposal is thus
15 materially different than those the Commission has previously approved, all of which involved
16 specific threats, *e.g.*, Advisory Opinion 2011-17 (Giffords for Congress) at 2; Advisory Opinion
17 2011-05 (Terry) at 1-2; Advisory Opinion 2009-08 (Gallegly for Congress) at 2, or a heightened
18 threat environment affecting current officeholders, *see* Advisory Opinion 2017-07 (Sergeant at
19 Arms) at 3. Here, there are no facts to suggest any similar connection between your position as a
20 former officeholder and the recent incidents prompting the suggested repair or replacement of
21 your residential security equipment. Accordingly, the Commission concludes that the proposed
22 use of campaign funds for those purposes would constitute an impermissible personal use of

1 campaign funds under the Act and Commission regulations.³

2 This response constitutes an advisory opinion concerning the application of the Act and
3 Commission regulations to the specific transaction or activity set forth in your request. *See*
4 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or
5 assumptions presented, and such facts or assumptions are material to a conclusion presented in
6 this advisory opinion, then the requestor may not rely on that conclusion as support for its
7 proposed activity. Any person involved in any specific transaction or activity which is
8 indistinguishable in all its material aspects from the transaction or activity with respect to which
9 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
10 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
11 affected by subsequent developments in the law including, but not limited to, statutes,
12 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
13 on the Commission's website.

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On behalf of the Commission,

Steven T. Walther,
Chairman.

³ This request does not present the question whether a former candidate or officeholder could permissibly use campaign funds to pay for residential security expenses where such expenses have resulted from campaign or officeholder activities, *i.e.*, where the requestor identifies particular facts demonstrating a security threat related to his or her status as a former officeholder or candidate. Because this request does not identify any facts suggesting a security threat related to the requestor's status as a former officeholder or candidate, the Commission does not answer that hypothetical question here.