



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

APR 12 3 54 PM '95

April 12, 1995

**MEMORANDUM**

**TO:** The Commission

**THROUGH:** John C. Suzina  
Staff Director

**FROM:** Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Jonathan M. Levin  
Senior Attorney

**SUBJECT:** Draft AO 1995-8

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for April 20, 1995.

**AGENDA ITEM**

For Meeting of: APR 20 1995

Attachment

**DRAFT**

ADVISORY OPINION 1995-8

The Honorable Bart T. Stupak  
Stupak for Congress, Inc.  
P.O. Box 143  
Menominee, MI 49858

Dear Congressman Stupak:

This responds to your letter dated March 3, 1995, as supplemented by your letter dated April 5, 1995, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to the rental by Stupak for Congress, Inc. ("your committee") of office space and equipment from your wife and you.

You wish to have your committee continue to rent as its headquarters the building that contains your former law office. The building is located two miles from your residence and is owned by your wife and you. Your committee will be the only occupant of the building. It will rent the entire office and pay a rent of \$500 per month. You believe that this amount is "at or just below the fair market value of the building."<sup>1/</sup> The building contains all of your campaign supplies and equipment. Your committee will also be responsible for all utilities, i.e., water, electricity, and gas. Your wife and you, as owners of the building, will

---

<sup>1/</sup> In your supplemental letter, you state that, when you were practicing law, your professional corporation paid rent in the amount of \$650 per month, plus utilities, to your wife and you. You further state that a survey of local realtors in 1992, the year you were first elected to Congress, indicated that the fair market rental value was \$750 per month, plus utilities.

3 retain responsibility for the real estate taxes, maintenance,  
4 and repair.

5 In addition, your committee proposes to rent all of the  
6 equipment of your former law office, Bart T. Stupak, P.C.  
7 The equipment includes a copier, FAX machine, telephone  
8 system, computers, printers, desks, and "numerous" other  
9 items of office equipment. Your professional corporation  
10 would charge your committee a rent of \$200 per month for the  
11 equipment.

12 The Commission has previously stated that, under the Act  
13 and Commission regulations, a candidate and the candidate's  
14 campaign committee have wide discretion in making  
15 expenditures to influence the candidate's election. The Act  
16 provides, however, that the candidate and the campaign  
17 committee may not convert excess campaign funds to the  
18 personal use of the candidate or any other person. 2 U.S.C.  
19 §439a; 11 CFR 113.2(d). Advisory Opinions 1994-22 and  
20 1994-8.

21 The Commission has recently promulgated new regulations  
22 defining what would constitute personal use of campaign  
23 funds.<sup>2/</sup> In general, "personal use" means "any use of funds  
24 in a campaign account of a present or former candidate to  
25 fulfill a commitment, obligation or expense of any person  
26 that would exist irrespective of the candidate's campaign or  
27 duties as a Federal officeholder." 11 CFR 113.1(g). The  
28

29 <sup>2/</sup> The new regulations became effective on April 5, 1995.  
30 60 Fed. Reg. 17193-4 (April 5, 1995).

3 regulations specifically address payments by a committee for  
4 rental of a candidate's property, and they provide that  
5 personal use includes:

6 (E) Mortgage, rent or utility payments --

7 (1) For any part of any personal residence of  
8 the candidate or a member of the candidate's  
9 family; or

10 (2) For real or personal property that is  
11 owned by the candidate or a member of the  
12 candidate's family and used for campaign purposes,  
13 to the extent the payments exceed the fair market  
14 value of the property usage.

15 11 CFR 113.1(g)(1)(i)(E)(1) and (2).

16 The Commission's Explanation and Justification of these  
17 regulations explains the proper application of this  
18 definition. It states that, in the past, the Commission has  
19 generally permitted campaigns to rent property owned by a  
20 candidate or a family member for campaign use, so long as the  
21 campaign paid no more than the usual and normal rental. The  
22 new rule at paragraph (g)(1)(i)(E) provides, however, that  
23 the use of campaign funds to rent all or part of a personal  
24 residence of the candidate or a family member is personal  
25 use, even if part of the personal residence is being used in  
26 the campaign. On the other hand, the cited paragraph  
27 permits the use of campaign funds for the rental of property  
28 owned by the candidate or a family member, where the property  
29 is rented for campaign purposes and is not part of a personal  
30 residence of either. A campaign committee may therefore  
rent, for campaign use, part of an office building owned by  
the candidate so long as it pays no more than the fair market  
value. Commission Regulations on Personal Use of Campaign

3 Funds, Explanation and Justification, 60 Fed. Reg. 7862, 7865  
4 (February 9, 1995).

5 Based on the foregoing, the Commission concludes that  
6 your committee may rent the building owned by you and your  
7 wife, so long as none of the property being rented includes  
8 any part of the personal residence of you or your family.

9 In stating this conclusion, the Commission also notes  
10 that, in the Explanation and Justification, several previous  
11 opinions have been superseded by the new regulations. As  
12 discussed, to the extent they permit the use of campaign  
13 funds for mortgage, rent, or utility payments on any part of  
14 the personal residence of the candidate or a member of the  
15 candidate's family, these opinions are superseded. See  
16 Advisory Opinions 1988-13, 1985-42, 1983-1, and 1976-53.

17 You have suggested that the rental amount charged may be  
18 below the usual and normal charge for rental of the building.  
19 Although this avoids the payment of excessive rent and,  
20 hence, personal use of campaign funds, the undercharging for  
21 rent would constitute something of value to the committee and  
22 would thus be an in-kind contribution from your spouse and  
23 you. 2 U.S.C. §431(8)(A)(i); 11 CFR 100.7(a)(1),  
24 (a)(1)(iii)(A) and (a)(1)(iii)(B).<sup>3/</sup> See Advisory Opinion

25  
26 <sup>3/</sup> The term "contribution" includes giving "anything of  
27 value" for the purpose of influencing an election. 2 U.S.C.  
28 §431(8)(A)(i); 11 CFR 100.7(a)(1). The term "anything of  
29 value" includes the provision of goods or services at less  
30 than the usual and normal charge. 11 CFR  
100.7(a)(1)(iii)(A). The "usual and normal charge" for goods  
means the price of those goods in the market from which they  
ordinarily would have been purchased at the time of the

3 1994-8. Commission regulations provide that a candidate may  
4 make unlimited expenditures from personal funds. 11 CFR  
5 110.10(a). An individual other than a candidate, however, is  
6 limited to contributions aggregating \$1,000 per election to a  
7 candidate and his authorized political committees. 2 U.S.C.  
8 §441a(a)(1)(A). This limitation applies to a spouse or a  
9 family member of a candidate, as well as to other  
10 individuals. Accordingly, half of the difference between the  
11 amount of rent paid by your committee and the usual and  
12 normal charge for the rent will be a contribution from your  
13 spouse. Compare Advisory Opinion 1986-28.<sup>4/</sup> The aggregate  
14 amounts will be subject to the \$1,000 per election limit.

15 The Commission notes that your wife and you will retain  
16 responsibility for the real estate taxes, maintenance, and  
17 repair. These are usually the normal expenses incurred by  
18 lessors of real property, and the Commission assumes they  
19 will be covered by rental payments made by your committee.

20 Your committee also proposes to rent office equipment,  
21 listed above, from your professional corporation. As a  
22 corporation, Bart T. Stupak, P.C., would be prohibited from  
23

24 \_\_\_\_\_  
25 (Footnote 3 continued from previous page)  
26 contribution. 11 CFR 100.7(a)(1)(iii)(B).

27 <sup>4/</sup> In this 1986 opinion, the Commission acknowledged the  
28 significance of a campaign's use of real property owned  
29 jointly by a candidate and spouse. The Commission concluded  
30 that use of the residence for the campaign would not result  
in a contribution from the candidate or his spouse because it  
was being used in connection with providing their joint  
volunteer services to the campaign. See 11 CFR 100.7(b)(4)  
and 100.8(b)(5).

3 making any contribution to your committee. 2 U.S.C.  
4 §441b(a); 11 CFR 114.2(b). Providing use of the equipment at  
5 less than the usual and normal rental charge for such  
6 equipment would result in a corporate contribution to your  
7 committee. 11 CFR 114.1(a)(1). See footnote 3 above  
8 (defining "contribution," "anything of value," and "usual and  
9 normal charge"). If a usual and normal charge does not exist  
10 for the rental of all the equipment as an ensemble from a  
11 single vendor, then the amounts charged by your corporation  
12 should be based on how these items are grouped in the office  
13 equipment rental market and the rental amounts for such  
14 groups. See 11 CFR 100.7(a)(1)(iii)(B).

15 Because 2 U.S.C. §439a prohibits the personal use of  
16 committee funds, your committee also should avoid paying your  
17 corporation more than the usual and normal charge for the  
18 equipment. Excessive payment to your corporation would  
19 "unduly augment the earnings of an asset owned by the  
20 candidate." Advisory Opinion 1994-8.

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

25 Sincerely,

26  
27 Danny L. McDonald  
28 Chairman

29 Enclosures (AO 1994-22, 1994-8, and 1986-28)  
30