



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

STATEMENT OF CHAIRMAN ALLEN J. DICKERSON AND COMMISSIONER SHANA M. BROUSSARD REGARDING ADVISORY OPINION 2022-07 (SWALWELL)

On July 25, 2022, the Commission approved an advisory opinion in response to a request from Congressman Eric Swalwell and Swalwell for Congress. Among other things, Congressman Swalwell asked whether he was permitted to use campaign funds to pay for overnight childcare when he travels for campaign events for his campaign, if his spouse is not available to care for their children. In its advisory opinion, the Commission concluded that such payments are lawful because the expenses would not exist irrespective of Congressman Swalwell's campaign.

We write separately to state that, in our view, the use of campaign funds to pay for childcare while Congressman Swalwell is traveling overnight for his campaign is permissible without regard to whether his spouse is available to care for their children. The question of whether a candidate's spouse is technically available to provide childcare is an inherently subjective inquiry and determining whether the spouse's work or other commitments render them unable to provide childcare is well outside the Commission's purview.

In prior advisory opinions, the Commission has concluded that candidates may use childcare costs incurred as a result of their own campaigns to the extent that the expenses were a "direct result of campaign activity," because such expenses would not have existed irrespective of the candidates' campaigns.¹ Although in both of those matters the candidate's spouse was working full-time, the Commission's conclusion rested on the fact that the candidate was unavailable to care for the candidate's child because the candidate was engaging in campaign activities.²

Ultimately, whether a spouse or another family member is available to provide free childcare in the candidate's absence is not relevant to the question of whether the candidate's childcare expenses would exist irrespective of his campaign. Where a candidate incurs childcare expenses that would not exist irrespective of the candidate's activities in support of their own campaign, they may be paid for using campaign funds.

¹ See Advisory Opinion 2019-13 (MJ for Texas) (concluding that candidate who had worked full-time and whose children were in full-time daycare prior to candidacy could use campaign funds to pay for childcare expenses incurred as a direct result of campaign activity); Advisory Opinion 2018-06 (Liuba for Congress) (concluding that candidate who had worked from home as consultant and cared for her children full time could use campaign funds to pay for childcare expenses incurred as a direct result of campaign activity).


² In Advisory Opinion 2018-06 (Liuba for Congress), the requestor stated that in addition to full-time childcare, she anticipated needing additional childcare on evenings and weekends due to campaign activities. The Commission approved the request without conditioning the use of campaign funds to those times when the requestor's spouse was unavailable to care for their children.

August 10, 2022
Date



Allen J. Dickerson
Chairman

August 10, 2022
Date



Shana M. Broussard
Commissioner