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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 17-32-C
AGENDA ITEM
For meeting of July 13, 2017
SUBMITTED LATE

July 12, 2017

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by RMK*
Acting General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Joanna S. Waldstreicher *JSW*
Attorney

Subject: AO 2017-07 (Sergeant at Arms) Draft C

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 9:00 am (Eastern Time) on July 13, 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 2017-07

2

3 Hon. Paul D. Irving

4 Sergeant at Arms

5 U.S. House of Representatives

6 H-124 Capitol

7 Washington, DC 20515-6634

8

9 Dear Mr. Irving:

DRAFT C

10 We are responding to your advisory opinion request concerning the application of the
11 Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission
12 regulations to the proposed use of campaign contributions by Members of the United States
13 House of Representatives (“Members of Congress” or “Members”) for residential security
14 systems. The Commission concludes that Members of Congress may use campaign funds to pay
15 for costs associated with installing (or upgrading) and monitoring a security system at the
16 Members’ residences without such payments constituting an impermissible conversion of
17 campaign funds to personal use, under the Act and Commission regulations.

18 **Background**

19 The facts presented in this advisory opinion are based on your advisory opinion request
20 received on June 21, 2017, the supplemental letter received on June 29, 2017, and a comment
21 from Rep. Gregg Harper received on July 12, 2017.

22 As the Sergeant at Arms, you are the chief law enforcement official for the United States
23 House of Representatives. Advisory Opinion Request at AOR001. You state that “Members
24 receive threatening communications on a daily basis” and that the incidence of such threats is
25 increasing. *Id.* In calendar year 2016, the United States Capitol Police investigated 902
26 threatening communications received by Members, while in approximately the first six months
27 of 2017 they have investigated 950 such communications. *Id.* You characterize this as “the new

1 daily threat environment faced by Members of Congress.” *Id.* You indicate that the anonymous
2 nature of many of the threats makes the Capitol Police’s investigation of those threats
3 particularly challenging, and you contend that “Members of the U.S. House of Representatives
4 require a residential security system due to the threat environment.” AOR002.

5 The comment from Rep. Harper further clarifies the nature of the threat he and other
6 Members of Congress are facing. “These types of threats necessitate a proactive rather than
7 reactive response. Members are unfortunately no longer able to wait until confirmation of a
8 threatening communication before taking prudent steps to protect themselves and their family.”¹

9 **Question Presented**

10 *May Members of Congress use campaign contributions to install or upgrade residential*
11 *security systems that do not constitute structural improvements to the Members’ homes?*

12 **Legal Analysis and Conclusions**

13 Yes, Members of Congress may use campaign contributions to install or upgrade
14 residential security systems that do not constitute structural improvements to Members’ homes.
15 Such systems fall within the uses defined as permissible under the Act: ordinary and necessary
16 expenses incurred in connection with the duties of the individual as a holder of federal office. 52
17 U.S.C. 30114 § (a)(2).

18 As a permitted use, the spending on the residential security systems does not fall into the
19 Act’s prohibition on federal officeholders’ converting contributions they have accepted to their
20 own “personal use.” 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.2(e). Conversion to personal
21 use occurs when a contribution or amount is used “to fulfill any commitment, obligation, or

¹ Comment of Rep. Gregg Harper dated July 12, 2017.

1 expense” of a federal officeholder “that would exist irrespective” of the federal officeholder’s
2 duties. 52 U.S.C. § 30114(b)(2); see also 11 C.F.R. § 113.1(g).²

3 The Act and Commission regulations provide a non-exhaustive list of items that would
4 constitute a prohibited personal use *per se*, none of which applies here. See 52 U.S.C.
5 § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i)(A)-(J). For items not on this list, such as
6 payments for residential security systems, the Commission determines on a case-by-case basis
7 whether such expenses would fall within the definition of “personal use.” 11 C.F.R.
8 § 113.1(g)(1)(ii). The Commission has long recognized that if a candidate “can reasonably
9 show that the expenses at issue resulted from campaign or officeholder activities, the
10 Commission will not consider the use to be personal use.” Personal Use of Campaign Funds, 60
11 Fed. Reg. 7862, 7867 (Feb. 9, 1995).

12 The Commission has previously concluded that payments for, or improvements to, a
13 residential security system, under certain circumstances, do not constitute personal use under
14 the Act and Commission regulations. In Advisory Opinion 2011-17 (Giffords), Advisory
15 Opinion 2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly), Members of Congress
16 faced specific and ongoing threats to the safety of themselves and their families. The facts
17 presented in those advisory opinions suggested that the threats were motivated by the Members’
18 public roles as federal officeholders and/or candidates. In all three instances, the Capitol Police
19 recommended security upgrades to the Members’ residences due to the continuing threats, and
20 the proposed upgrades did not increase the value of the officeholders’ property. The

² While these provisions also proscribe personal use of campaign funds by federal candidates who are not current federal officeholders, the advisory opinion request was, and this advisory opinion is, limited to payments by current federal officeholders. You have not asked about, and this opinion does not address, the use of campaign funds for residential security by candidates for federal office, or for former federal officeholders.

1 Commission concluded that the threats would not have occurred had the Members not been
2 federal officeholders and/or candidates, and that the expenses for the proposed residential
3 security upgrades would not exist irrespective of their duties as federal officeholders and/or
4 candidates. Therefore, the Commission concluded that the use of campaign funds to pay for the
5 security upgrades recommended by the Capitol Police that did not increase the value of the
6 Members' homes would not constitute a prohibited personal use of campaign contributions
7 under the Act or Commission regulations.

8 The Commission has carefully considered the information provided by your office and
9 Representative Harper regarding both (1) the current threat environment facing Members of
10 Congress due to their status as federal officeholders; and (2) the Capitol Police's threat
11 assessment, resulting in its recommendation that Members upgrade their residential security.³
12 In light of this information, the Commission concludes that Members of Congress may, while in
13 office, use campaign funds to pay for the reasonable costs associated with installing (or
14 upgrading) and monitoring a security system at Members' residences that do not increase the
15 value of the Members' homes, regardless of whether those Members have received specific or
16 ongoing threats, without such payments constituting a prohibited personal use of campaign
17 contributions under the Act and Commission regulations.⁴ Specifically, the Commission
18 authorizes the use of campaign funds to pay for the installation (or upgrade) and monitoring

³ The advisory opinion request in this instance asks only about use of campaign funds by federal officeholders. Candidates who are not federal officeholders may rely on Advisory Opinion 2011-17 (Giffords), Advisory Opinion 2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly) if the relevant facts are materially indistinguishable from the facts of those advisory opinions, or they may submit an advisory opinion request.

⁴ The Commission assumes that officeholders' campaign committees will pay the fair market value of any such residential security installation or upgrades to prevent the acceptance of potentially impermissible in-kind contributions from vendors.

1 costs of cameras, sensors, and similar removable security devices in and around a Member's
2 residence.⁵ These expenses must be reported as "residential security expenses" on campaign-
3 finance reports; simultaneously with the approval of this Advisory Opinion, the Commission
4 will add "residential security expenses" to its list of purposes deemed "adequate" for campaign
5 disbursements. This guidance is prospective only: Unless otherwise allowed by a previous
6 advisory opinion, residential security expenses incurred before June 2017 constitute a prohibited
7 personal use of campaign contributions.

8 The Commission emphasizes that this conclusion is based on the information you
9 provided about the current heightened threat environment experienced by Members of
10 Congress, as assessed by the Capitol Police, and that if the threat environment should diminish
11 significantly at some point in the future, this conclusion may no longer apply.

12 This response constitutes an advisory opinion concerning the application of the Act and
13 Commission regulations to the specific transaction or activity set forth in your request. *See*
14 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or
15 assumptions presented, and such facts or assumptions are material to a conclusion presented in
16 this advisory opinion, then the requestors may not rely on that conclusion as support for their
17 proposed activity. Any person involved in any specific transaction or activity which is
18 indistinguishable in all its material aspects from the transaction or activity with respect to which
19 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
20 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
21 affected by subsequent developments in the law including, but not limited to, statutes,

⁵ Such residential security expenses are not considered to be "utility payments" under 11 C.F.R. § 113.1 (g)(1)(i)(E).

1 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
2 on the Commission's website.

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On behalf of the Commission,

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Steven T. Walther,
Chairman

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