

TESTIMONY SUPPORTING HB 4104

Daniel Meek

House Committee on Rules

February 13, 2020

Testimony against this bill almost writes itself. In Oregon's system of unlimited, and often gigantic, campaign contributions, HB 4104 would allow candidates and public officeholders to use campaign funds for personal purposes: caregiving to relatives and health insurance premiums for the candidate or public officeholder and members of the same household.

There is no doubt that caregiving and health insurance premiums are necessary personal costs. So are food, shelter, clothing, and transportation. Why not allow use of campaign funds for those purposes as well? Candidates need all of those things in order to effectively run for office. Why not allow candidates and public officeholders to be put directly on the payrolls of the big donor corporations and unions? At least then it would become more apparent who is beholden to whom.

One troublesome element of this bill is its application to public officeholders. If the office requires a large fraction of the person's time, it generally carries compensation. Why should the officeholder then be able to take additional funds from big private donors for personal purposes?

It is human nature that having big donors to pay for admittedly personal costs of candidates and officeholders will create gratitude toward the donors and cause them to be held in high regard. It is also human nature to return favors, a task which public officeholders will have ample opportunities to fulfill (votes on bills, approval of public contracts, etc.).

This bill might make sense if there were reasonable limits on campaign contributions in Oregon, where limits exist only for candidates for public office of the City of Portland and Multnomah County. With reasonable limits, the sense of gratitude toward the donors would be greatly reduced.

But in Oregon the situation is more complex.

First, existing law allows candidates to spend campaign money for caregiving to relatives that is necessary to enable campaigning by the candidate. Oregon law allows campaign contributions to be spent on anything that is necessary to run a campaign. Many campaign events already provide caregiving for the dependents of attendees, and I have seen no assertion that such spending is prohibited. The Federal Election Commission (FEC) has approved use of campaign funds in federal races for caregiving costs of candidates.

We are responding to your advisory opinion request concerning the application of the Federal Election Campaign Act, 52 U.S.C. 30101-45 (the "Act"), and Commission regulations to your proposed use of campaign funds to pay for childcare expenses incurred during your candidacy for federal office. The Commission concludes that your authorized campaign committee may use campaign funds to pay for the childcare expenses described in your request because such expenses would not exist irrespective of your candidacy.

FEC, ADVISORY OPINION 2018-06 (May 10, 2018) (full opinion attached). The opinion allowed use of campaign funds to pay a part-time or full-time caregivers for the candidate's children. FEC concluded that such would not be a "personal use" of campaign funds.

Second, existing law allows candidates to spend campaign money for health insurance premiums, although perhaps not directly. Past candidates have used a variety of techniques to pass campaign money into the personal accounts of relatives or of themselves, without being charged with campaign finance violations.

- > Payments of \$88,000 to the candidate's wife and \$10,000 to the candidate's own company for "campaign management services."¹

1. Nigel Jaquiss, *Rep. Greg Smith Is a Member of the Select Group That Doles Out State Dollars. He Also Makes a Tidy Living From Public Contracts. It's Perfectly Legal.*, WILLAMETTE WEEK, May 29, 2019.

- > Payments of \$400 per month to the legislator for using a room in his home as his "District Office";²
- > Payment of \$7,200 to the law firm of the candidate's husband for office space.³
- > Payment of \$357 per month to rent a room in a niece's apartment of Salem.⁴

So a candidate can hire a member of his household onto the campaign and pay a salary. The member can then purchase health insurance for himself and the candidate through Healthcare.gov or other means. If the household income is below average, the Affordable Care Act provides substantial premium assistance, sometimes reducing premiums to zero.

Or the candidate can use the technique employed by Rep. Greg Smith of using campaign funds to pay the candidate's own company for management services. The company can then pay the candidate's health insurance premiums.

THE -1 AMENDMENT

The -1 Amendment, filed by Rep. Power on February 10, would eliminate the part of HB 4104 that would allow the use of campaign funds to pay health insurance premiums for candidates, public officeholders, and members of their households. Still, as noted above, campaign funds under existing law could be routed through relatives or household members to accomplish the same result. I see no harm in making the payment of health insurance premiums apparent to the public.

2. Nigel Jaquiss, *Perfectly Legal: How one lawmaker uses campaign money to subsidize his mortgage, pay his bar tabs and explore Canada*, WILLAMETTE WEEK, May 11, 2011.

3. Rachel Monahan & Nigel Jaquiss, *Worldwide Travel Highlights Unusual Campaign Spending by Former Oregon House Majority Leader Jennifer Williamson*, WILLAMETTE WEEK, February 10, 2020.

4. *Id.*

CONCLUSION

In sum, it appears that HB 4104 would not allow use of campaign funds for personal purposes any more than does existing Oregon law. But it could make such personal use for health insurance premiums more apparent to the public by allowing such use without the need for creation of partnerships or LLCs or other means to route campaign money to relatives. HB 4104 could be considered a transparency improvement.

The underlying problem is that Oregon does not have enforceable limits on campaign contributions outside of races for Portland and Multnomah County public offices. Adoption of HB 4104 may leave the impression that the Legislature is fine with changing the law to allow candidates and public officeholders to become dependent on big donors for the personal expenses of caregiving and health insurance premiums. But that is already the case.

HB 4104 could be improved by restricting use of campaign funds for caregiving and health insurance premiums to candidates who agree to limit their receipt of contributions to the amounts allowed in the Portland and Multnomah County charter amendments adopted in 2016 and 2018: \$500 per election from any individual and from any PAC.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 10, 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2018-06

Ms. Liuba Grechen Shirley
Liuba for Congress
P.O. Box 69
Amityville, NY 11701

Dear Ms. Shirley:

We are responding to your advisory opinion request concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the "Act"), and Commission regulations to your proposed use of campaign funds to pay for childcare expenses incurred during your candidacy for federal office. The Commission concludes that your authorized campaign committee may use campaign funds to pay for the childcare expenses described in your request because such expenses would not exist irrespective of your candidacy.

Background

The facts presented in this advisory opinion are based on your letter received on April 3, 2018 ("the request" or "AOR").

You are a candidate for the 2nd Congressional District of New York, and Liuba for Congress serves as your principal campaign committee.¹ Prior to becoming a candidate for federal office, you worked from home as a consultant, and cared for your young children full time. Your husband works full time. Since you started campaigning, you have forgone your income and hired a part-time caregiver for your children so that you are able to fulfill your

¹ Commission records indicate that you filed your current Statement of Candidacy on April 3, 2018, and that Liuba for Congress filed its current Statement of Organization on February 7, 2018. See Liubov "Liuba" Grechen Shirley, Statement of Candidacy, FEC Form 2 (Apr. 3, 2018), <http://docquery.fec.gov/pdf/070/201804039097939070/201804039097939070.pdf>; Liuba for Congress, Statement of Organization, FEC Form 1 (Feb. 7, 2018), <http://docquery.fec.gov/pdf/954/201802079094263954/201802079094263954.pdf>.

responsibilities as a federal candidate. You anticipate that as the primary election approaches, you will require full-time care for your children, as well as additional childcare support on evenings and weekends, so that you can devote the time necessary to run your campaign.

Question Presented

May Liuba for Congress use campaign funds to pay for the childcare expenses described in the request?

Legal Analysis and Conclusions

Yes, Liuba for Congress may use campaign funds to pay for the childcare expenses described in the request during the pendency of your campaign.

Under the Act and Commission regulations, an authorized committee may use its funds for several specific purposes, including “ordinary and necessary expenses incurred in connection with duties of the individual as a holder of [f]ederal office,” and “any other lawful purpose” that does not otherwise constitute conversion of campaign funds to “personal use.” *See* 52 U.S.C. § 30114(a), (b); 11 C.F.R. §§ 113.1, 113.2. The Act and Commission regulations define “personal use” as the use of campaign funds “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign” or duties as a federal officeholder. 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

The Act and Commission regulations provide a non-exhaustive list of uses of campaign funds that are *per se* personal use. 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i). For uses of campaign funds not included on this list, the Commission determines, on a case-by-case basis, whether the use is a prohibited “personal use,” *i.e.*, whether the expense would exist irrespective of the candidate’s campaign or federal officeholder duties. 11 C.F.R. § 113.1(g)(1)(ii).

The Act and Commission regulations do not expressly address childcare expenses. The Commission accordingly must determine whether the proposed use of campaign funds for certain childcare expenses would exist irrespective of the candidate’s campaign for federal office. *Id.*

The Commission has previously considered the permissibility of using campaign funds to pay for certain childcare expenses in more limited circumstances. In Advisory Opinion 1995-42 (McCrery), a federal candidate and his wife, who was “an integral part” of the candidate’s campaign team, traveled extensively within the candidate’s congressional district for campaign purposes, resulting in the need for “occasional” childcare for the couple’s young child. Advisory Opinion 1995-42 (McCrery) at 1. The Commission concluded that it was permissible to use

campaign funds to pay for such occasional childcare because such expenses, in that case, would be “incurred only as a direct result of campaign activity and would not otherwise exist.” Advisory Opinion 1995-42 (McCrery) at 2; *see* 11 C.F.R. § 113.1(g).²

The Commission’s analysis and conclusion in Advisory Opinion 1995-42 (McCrery) apply equally here. The request explains that you are the full-time caregiver for your young children, and, because of your campaign activity, you will incur expenses for part-time or full-time childcare. The fact that you seek to use campaign funds to pay for more than the “occasional” childcare expenses approved of in Advisory Opinion 1995-42 (McCrery) does not change the relevant question, which is whether such expenses would exist irrespective of the candidate’s campaign or officeholder duties. The Commission concludes that the childcare expenses described in your request, to the extent such expenses are incurred as a direct result of campaign activity, would not exist irrespective of your election campaign, and thus may be permissibly paid with campaign funds. *See* 52 U.S.C. § 30114(a)(1), (b); 11 C.F.R. § 113.1(g).

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

On behalf of the Commission,



Caroline C. Hunter
Chair

² The Commission was also asked about the permissibility of using campaign funds to pay for childcare expenses in 2008, however, the Commission lacked a quorum at that time to render any opinion. *See* Letter from Rosemary C. Smith to Todd Goldup, Advisory Opinion Request 2008-02 (Goldup) (Apr. 17, 2008) (advising requestor of Commission’s lack of quorum).