

December 14, 2007

Thomasenia P. Duncan, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: People for Pete Domenici Request for Advisory Opinion

Dear Ms. Duncan:

On November 15, 2007, People for Pete Domenici, the principal campaign committee for Senator Pete Domenici (R-NM), requested an advisory opinion as to whether it is permissible for the campaign committee to pay the legal fees and expenses of Sen. Domenici and **some of the senator's staff**, stemming from an investigation by the Senate Select Committee on Ethics into whether the senator engaged in improper conduct in violation of Senate rules. Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests that the Federal Election Commission ("FEC") decline to allow Sen. Domenici to use his campaign funds for the legal fees and expenses of the senator's staff.

The FEC has previously considered whether a member of the House of Representatives could use campaign funds to pay legal expenses incurred in connection with an investigation by the House Committee on Standards of Official Conduct. Advisory Opinion 2006-35. In response to a request for an advisory opinion sought by the campaign committee for former Rep. Jim Kolbe, the Commission held that expenses incurred pursuant to a House investigative inquiry into "alleged violations of the Official Code of Conduct or of any applicable rules, laws, or regulations governing the performance of official duties or the discharge of official responsibilities" are "ordinary and necessary expenses incurred" in connection with the individual's duties as a member of the House of Representatives. *Id.* The Commission also allowed the principal campaign committee of Rep. Earl Hilliard (D-AL) to use campaign funds to pay expenses incurred, in part, as a result of House ethics committee investigation. Advisory Opinion 1998-01.

Based on these and other FEC precedents, it appears likely that the Commission will grant the Domenici campaign committee's request to use campaign funds to defray the senator's legal expenses. There is no precedent, however, for the Commission extending the exception to the ban on converting campaign funds to personal use to allow members of Congress to pay the legal expenses of their staff. The advisory opinion cited by Sen. Domenici's counsel, Advisory Opinion 1996-24, is inapplicable.

In that case, Rep. Wester S. Cooley and his campaign committee sought to use campaign funds for legal expenses associated with conferences between lawyers and Rep. Cooley and his spouse. Advisory Opinion 1996-24. The Commission found that campaign funds could properly be expended on these conferences to the extent they involved press allegations of wrongful conduct by Rep. Cooley's spouse, "since her alleged improprieties also appear to have become issues in his

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reelection campaign.” Id. In that matter, the Commission based its decision, in part, on the fact that Rep. Cooley’s expenses were tied to his status as a candidate actively seeking reelection; the Commission expressed no opinion as to whether campaign funds could be spent on legal expenses at a time when Rep. Cooley was not seeking election to federal office. Id.

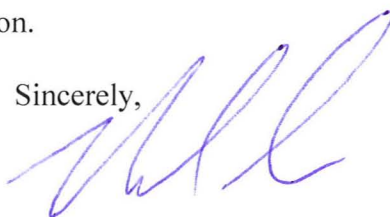
Here, Sen. Domenici has announced he is not running for reelection. As a result, any potential improprieties by Sen. Domenici’s staff cannot be issues in a non-existent reelection campaign. In addition, while increased scrutiny frequently falls on a candidate’s spouse that would not exist irrespective of a candidate’s campaign for public office -- the key rationale on which the Commission has relied in allowing the use of campaign funds for press and legal expenses -- the same cannot be said of congressional staff. These hardworking, but less visible individuals generally are not themselves subjected to the increased scrutiny to which the members of Congress (and congressional spouses) for whom they work are exposed.

In addition, allowing members of Congress to use campaign funds to pay for the legal counsel of staff members who are witnesses to the events under investigation creates a situation ripe for manipulation and conflicts of interest. In this case, it is Sen. Domenici, not any member of his staff, who is alleged to have engaged in wrongdoing. Having taken the depositions of members of Sen. Domenici’s staff, the committee must have believed that these individuals had information relevant to the committee’s investigation. Staff members who would -- quite reasonably -- be cowed by substantial legal bills would undoubtedly be quite grateful to have any such bills covered by their boss, perhaps even grateful enough to tailor their testimony to place their boss in a stronger legal position. It is also quite possible that a staff member might feel unable to refuse a member of Congress’s offer to provide legal counsel, yet might be inhibited from blowing the whistle on the that member in the presence of such counsel, fearful that the counsel might report back to the member of Congress.

Simply, permitting a member of Congress to use his or her campaign funds to defray a staff member’s legal costs incurred as a result of that staff member’s knowledge of possible wrongdoing by a member of Congress is not the best way to ensure that investigators get to the truth. Rather, it is the best way to ensure that members of Congress have the opportunity to influence vulnerable staff.

Thank you for your consideration.

Sincerely,



Melanie Sloan
Executive Director