

CHICAGO '96

RECEIVED
FEDERAL ELECTION
May 31, 1995
COMMISSION
SECRETARIAT

Jun 7 12 01 PM '95

Suite 2300
77 West Wacker Drive
Chicago, Illinois 60601

312 214-1996

312 263-8009 FAX

Mr. Danny L. McDonald
Chairman
Federal Election Commission
999 E Street NW
Washington, D.C. 20463

**RE: Request for an Advisory Opinion Concerning
Acceptance by a Presidential Nominating Convention
Host Committee, or Host Municipality, of Donations
And In-Kind Contributions from Persons, Companies
or other Entities Related to Banks**

Dear Mr. McDonald:

This letter is a request for an advisory opinion which would clarify that a presidential nominating convention host committee, or host municipality, may accept donations and in-kind contributions from persons employed by a bank, and companies or other entities related to a bank, provided that the source of the donation or in-kind contribution was not derived from the bank. Specifically, this inquiry encompasses two scenarios: (1) donations of funds or in-kind contributions by firms, companies or other entities which are not state or federally chartered banks, but which control, are controlled by, or are under common ownership with a state or federally chartered bank, including any holding, sister or subsidiary company of a state or federally chartered bank; and (2) non-reimbursed donations of funds and in-kind contributions by individuals who are officers, directors or employees of a state or federally chartered bank.

Chicago's Committee for '96 was established pursuant to 11 C.F.R. 9008.51(a)(1) which requires the registration of a host committee located in the city in which a presidential nominating convention will be held. The regulations governing the acceptance of contributions by a host committee permit acceptance of donations of funds or in-kind contributions from "local businesses (excluding banks), local labor organizations, and other local organizations or individuals" to defray various convention expenses. The same provision is included in the section controlling acceptance of donations of funds by the host municipality.

The above-referenced provisions preclude acceptance of donations of funds and in-kind contributions from "banks." Similarly, banks are precluded from providing

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goods or services at either a discount or at no cost. The only exception to this rule is that a bank may provide items of de minimis value such as samples, coupons, maps or pens.

The regulations do not define the term "bank" or indicate the scope of this term. These regulations differ from other Federal Election Code sections which refer to contribution prohibitions imposed on "national banks." The prohibition on national banks applies to contributions by national banks to any federal, state or local candidate or nominating caucus or convention.

In previous Federal Election Commission ("FEC") advisory opinions interpreting the prohibition on national bank contributions, the FEC has concluded that entities related to a national bank, such as a holding company, are not covered by the prohibition if the contribution was derived from a source other than revenues of the chartered bank entity. The prohibition appears to be limited to the "chartered" entity. It is logical to conclude from this analysis that non-chartered entities related to a state or federally chartered bank would likewise not be covered by the prohibition on bank contributions to a host committee or host municipality.

With regard to the second scenario described above, the FEC regulations governing presidential nominating conventions make no mention of officers, directors or employees of banks in the sections prohibiting bank contributions. While the federal statute prohibiting national bank contributions also prohibits all officers and directors of the national bank from "consenting" to a contribution, the section does not preclude contributions by officers and directors as individuals. Moreover, the FEC regulations governing presidential nominating conventions specifically permit contributions by individuals. It is logical to conclude, therefore, that the bank contribution prohibition relating to presidential nominating conventions does not apply to the officers, directors or employees of a bank, provided of course that the officers, directors or employees are not reimbursed by the bank for the contributions.

We appreciate your consideration of these issues, and look forward to receiving the advisory opinion clarifying the issues discussed above.

Very truly yours,



President
Chicago's Committee for '96

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cc: Nancy J. Clawson, Esq.
Leslie Fox
Joseph E. Sandler, Esq.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

June 15, 1995

Gery J. Chico, President
Chicago's Committee for '96
Suite 2300
77 West Wacker Drive
Chicago, IL 60601

Dear Mr. Chico:

This responds to your letter dated May 31, 1995 and received on June 7, 1995, which requests an advisory opinion regarding the future acceptance by Chicago's Committee for '96, a presidential nominating convention host committee, or by the host municipality, of monetary and in-kind donations from individuals, companies or other entities related to banks.

You ask whether the host committee or host municipality may accept donated funds or in-kind contributions from "firms, companies or other entities which are not state or federally chartered banks, but which control, are controlled by, or are under common ownership with a state or federally chartered bank." You indicate that the source of the funds would not be derived from the banks in question. You also seek advice as to whether the host committee or municipality may accept "non-reimbursed donations of funds and in-kind contributions by individuals who are officers, directors or employees of a state or federally chartered bank."

The Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). Commission regulations explain that requests made on behalf of an entity, such as a political committee, must be made by an "authorized agent of such person." 11 CFR 112.1(a). The request must concern a specific transaction or activity that "the requesting person plans to undertake or is presently undertaking and intends to undertake in the future." 11 CFR 112.1(b). The regulations also explain that such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c). The regulations further explain that this office shall determine if a request is incomplete or otherwise not qualified as an advisory opinion request. 11 CFR 112.1(d).

In view of the above requirements, we note that as

President of Chicago's Committee for '96, you would be authorized to request an advisory opinion with respect to future host committee activities. However, with respect to prospective activities of the host municipality, the city of Chicago, you will need to state your position, if any, as an official or employee of the city of Chicago. In the alternative, you should provide the name and position of the city official who has authorized you to seek an advisory opinion on behalf of the municipality. Assuming you are so authorized, you will need to provide further information that will present a complete description of the relevant facts and clarify the legal issues presented by your inquiry. Please respond to the following questions:

1) Provide a list of firms, companies and other entities which you anticipate may wish to donate funds or make in-kind donations to the host committee or the municipality for use with respect to the 1996 Presidential Nominating Convention in the following categories. If a complete list is not currently available, provide examples of possible donors that would be representative of the types of entities that may donate.

- a) Firms, companies or other entities which own or control a state or federally chartered bank, in whole or in part;
- b) Firms, companies or other entities which are owned or controlled by or are subsidiaries of a state or federally chartered bank, in whole or in part; and
- c) Firms, companies or other entities which are under common ownership or control with or are sister companies with a state or federally chartered bank, in whole or in part.

2) For each entity listed above, indicate whether it has offices or facilities located within the Metropolitan Area of Chicago. See 55 Federal Register 12154 (March 30, 1990) for a description of metropolitan areas.

3) For each entity listed above, also indicate the source of funds which would be used to make the proposed monetary donations.

4) For each entity listed above, describe the nature of the in-kind donations to be provided to the host committee or to the municipality.


5) Does the host committee anticipate receiving monetary or in-kind donations from financial institutions not listed above, such as savings and loan institutions or credit unions? If so, please respond to the above questions with

regard to these financial institutions.

If you wish to proceed with submitting an advisory opinion request, you will need to clarify your status with the municipality in question and respond to the above questions. Upon receiving your responses to the above questions, this Office and the Commission will give further consideration to your inquiry as an advisory opinion request. If you have any questions concerning the advisory opinion process or this letter, please contact Mr. Litchfield.

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
N. Bradley Litchfield
Associate General Counsel

CHICAGO '96

Suite 2300
77 West Wacker Drive
Chicago, Illinois 60601

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AUG 28 11 40 AM '95

August 24, 1995

Mr. Danny L. McDonald
Chairman
Federal Election Commission
999 E Street NW
Washington, D.C. 20463

AOR 1995-32

AUG 25 9 58 AM '95

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

**RE: Request for an Advisory Opinion Concerning Acceptance by
a Presidential Nominating Convention Host Committee of
Donations and In-Kind Contributions from Persons,
Companies or other Entities Related to Banks**

Dear Mr. McDonald:

This letter constitutes a clarification of a previous request for an advisory opinion on the issue of whether a presidential nominating convention host committee may accept donations and in-kind contributions from persons employed by a bank, and companies or other entities related to a bank, provided that the source of the donation or in-kind contribution was not derived from the bank. We understand from Mr. Litchfield's letter of June 15, 1995 that additional facts are necessary before the Federal Election Commission ("FEC") can consider and issue an advisory opinion in response to this inquiry. Mr. Litchfield's letter requested disclosure of specific firms, companies or other entities that would be representative of the types of donors at issue.

At this time, there are no specific prospective donors of the type covered by this inquiry. However, it is the intention of Chicago's Committee for '96 to avoid the solicitation of a person or entity which may not be an approved donor, and therefore the Committee seeks clarification of which persons and entities related to banks may be solicited. While we cannot disclose a specific known company or institution covered by the scenarios outlined in this letter, we have described the nature of such potential donors as requested in Mr. Litchfield's June 15, 1995 letter.

FACTS

This inquiry encompasses several scenarios which are each detailed below. In each case, the inquiry is whether the described company or individual is permitted to make the described monetary and/or in-kind contribution.

(1) ABC Company has a branch office located in the Metropolitan Area of Chicago, as defined by 55 Federal Register 12154. ABC Company wishes to make a monetary contribution of \$1,000.00 to Chicago's Committee for '96. In addition to the monetary contribution, ABC Company wishes to make an in-kind contribution consisting of five computers which will permanently become the property of Chicago's Committee for '96. ABC Company is not a state or federally chartered banking entity. ABC Company does, however, own and control a 51 percent ownership interest in a federally chartered bank. While ABC Company derives revenues from the activities of the subsidiary federally chartered bank, it also derives substantial revenues from other sources which are far in excess of the \$1,000.00 contribution. The donated computers were purchased from assets which also were not derived from the federally chartered bank subsidiary company.

(2) DEF Company has a branch office located in the Metropolitan Area of Chicago, as defined by 55 Federal Register 12154. DEF Company wishes to make a monetary contribution of \$1,000.00 to Chicago's Committee for '96. In addition to the monetary contribution, DEF Company wishes to make an in-kind contribution consisting of five computers which will permanently become the property of Chicago's Committee for '96. DEF Company is not a state or federally chartered banking entity. DEF Company is, however, wholly owned by a federally chartered bank. While DEF Company derives some revenues from services provided to the parent federally chartered bank, it derives a majority of its revenues from services it provides to companies and entities other than the federally chartered bank. These revenues are far in excess of the \$1,000.00 contribution. The donated computers were purchased from assets which also were not derived from the parent federally chartered bank.

(3) GHI Company has a branch office located in the Metropolitan Area of Chicago, as defined by 55 Federal Register 12154. GHI Company wishes to make a monetary contribution of \$1,000.00 to Chicago's Committee for '96. In addition to the monetary contribution, GHI Company wishes to make an in-kind contribution consisting of five computers which will permanently become the property of Chicago's Committee for '96. GHI Company is not a state or federally chartered banking entity. GHI Company, however, is wholly owned by a company which also has a 51% ownership interest in a federally chartered bank. While GHI Company derives revenues from the activities of the sister federally chartered bank, it also derives substantial revenues from other sources which are far

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contribution. The donated computers were purchased from assets which also were not derived from the sister federally chartered bank.

(4) JKL Company has a branch office located in the Metropolitan Area of Chicago, as defined by 55 Federal Register 12154. JKL Company is not a state or federally chartered bank, but is a credit union. JKL Company wishes to make a monetary contribution of \$1,000.00 to Chicago's Committee for '96. In addition to the monetary contribution, JKL Company wishes to make an in-kind contribution consisting of five computers which will permanently become the property of Chicago's Committee for '96.

(5) In each of the four scenarios described above, the president of the donor company, which has a branch office within the Metropolitan Area of Chicago, also intends to make a personal contribution of \$100.00 and volunteer 10 hours of personal time to provide in-kind professional consulting services. The donation of in-kind professional services will be rendered during time not involving employment activities, and will not utilize any of the facilities or services of the donor company or any of its branch office locations. The president of each company resides within the Metropolitan Area of Chicago. None of the four presidents will be reimbursed by her company for any portion of the monetary contribution or professional services rendered.

DISCUSSION

Chicago's Committee for '96 was established pursuant to 11 C.F.R. §9008.51(a)(1) which requires the registration of a host committee located in the city in which a presidential nominating convention will be held. The regulations governing the acceptance of contributions by a host committee permit acceptance of donations of funds or in-kind contributions from "local businesses (excluding banks), local labor organizations, and other local organizations or individuals" to defray various convention expenses. See 11 C.F.R. §9008.52(c).

The above-referenced provision precludes acceptance of donations of funds and in-kind contributions from "banks." Similarly, banks are precluded from providing goods or services at either a discount or at no cost. See 11 C.F.R. §9008.52(b) (referencing the limitations contained in 11 C.F.R. §9008.9). The only exception to this rule is that a bank may provide items of de minimis value such as samples, coupons, maps or pens. See 11 C.F.R. §9008.9(c).

The regulations do not define the term "bank" or indicate the scope of this term. These regulations differ from other Federal Election Code sections which refer to contribution prohibitions imposed on "national banks." The prohibition on national banks applies to

Mr. Danny L. McDonald
August 24, 1995
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applies to contributions by national banks to any federal, state or local candidate or nominating caucus or convention. See 2 U.S.C. §441b(a).

In a previous FEC advisory opinion interpreting the prohibition on national bank contributions, the FEC concluded that entities related to a national bank, such as a holding company, are not covered by the prohibition if the contribution was derived from a source other than revenues of the chartered bank entity. See A.O. 1981-61. This same conclusion involving federally chartered savings and loan institutions was reached in A.O. 1981-49 and A.O. 1980-7. The prohibition appears to be limited to the "chartered" entity. It is logical to conclude from this analysis that non-chartered entities related to a chartered bank would likewise not be covered by the prohibition on bank contributions to a host committee. Therefore, under the first three scenarios contained in this letter, we believe that the described monetary and in-kind contributions would be permitted. Moreover, the contributions should also be permitted if the related entity is chartered by the state rather than the federal government. There is no logical basis for restricting an entity related to a state chartered bank if such restrictions do not apply to a entity related to a federally chartered institution.

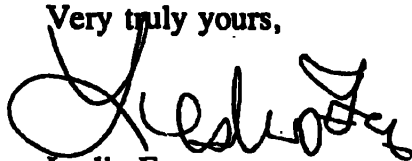
The fourth scenario involves an entity which by definition is not a bank. There are a variety of institutions and companies which provide financial services in some form. The use of the term bank in the FEC regulations is clearly intended to apply to those institutions which have been traditionally referred to, and regulated as, banks. If the intent of the regulations was to extend the prohibition to the entire spectrum of financial institutions, other types of institutions would have been specifically named. Therefore, we believe that the described monetary and in-kind contributions would be permitted by such financial institutions.

With regard to the fifth scenario described above involving personal non-reimbursed monetary and in-kind contributions, it also appears that these contributions would be permitted. The FEC regulations governing presidential nominating conventions make no mention of officers, directors or employees of banks in the sections prohibiting bank contributions. While the federal statute prohibiting national bank contributions also prohibits all officers and directors of the national bank from "consenting" to a contribution by the bank, the section does not actually preclude contributions by bank officers and directors as individuals. See 11 C.F.R. §114.2(d). Moreover, the FEC regulations governing presidential nominating conventions specifically permit contributions by individuals. See 11 C.F.R. §9008.52(c). It is logical to conclude, therefore, that the bank contribution prohibition relating to presidential nominating conventions does not apply to the officers, directors or employees of a bank or other financial institution, provided that the officers, directors or employees are not reimbursed by the company for the contributions.

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We appreciate your consideration of these issues, and look forward to receiving the advisory opinion clarifying the issues discussed above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Leslie Fox". The signature is fluid and cursive, with a large initial "L" and "F".

Leslie Fox
Vice-President and Executive
Director
Chicago's Committee for '96

cc: Kiplund R. Kolkmeier
Nancy Clawson