



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 22, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-32

Leslie Fox, Vice President and Executive Director
Chicago's Committee for '96
Suite 2300
77 West Wacker Drive
Chicago, IL 60601

Dear Ms. Fox:

This responds to your letter dated May 31, 1995, supplemented by your letter dated August 24, 1995, requesting an advisory opinion on behalf of Chicago's Committee for '96 ("the Committee"), a presidential nominating convention host committee. Your request concerns the application of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Presidential Election Campaign Fund Act ("the Fund Act"), and Commission regulations to the Committee's acceptance of monetary and in-kind donations from individuals, companies or other entities related to banks.

You ask whether the Committee may accept donated funds or in-kind contributions from "firms, companies or other entities" which are not federally chartered banks, but which either are credit unions or "control, are controlled by, or are under common ownership with" a federally chartered bank.^{1/} 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 Committee may accept "non-reimbursed donations of funds and in-kind contributions^{2/} by individuals who are officers, directors or employees of a state or federally chartered bank." Your subsequent letter states that these individuals are the presidents of the donor companies.

Your August 24, 1995 letter clarifies that there are no prospective donors of the types covered by your inquiry, and that you intend to avoid soliciting a person or entity which may not be an approved donor. Consequently, you describe four types of companies which you anticipate may respond to your solicitations by donating \$1000 each to the Committee for use with respect

to the 1996 Presidential Nominating Convention. Each of these companies has a branch office located in the Metropolitan Area of Chicago. These include a holding company that owns and controls a 51% ownership interest in a federally chartered bank. While the holding company derives revenues from its federally chartered bank subsidiary, it also derives revenues from other sources far in excess of the \$1000 it would donate.

A second potential donor is a subsidiary company that is wholly owned by a federally chartered bank. While the subsidiary company obtains some revenue from its parent company, a majority of its revenues is derived from services it provides to companies and entities other than the federally chartered bank. The third potential donor is a company that is wholly owned by a company which also has a 51% ownership interest in a federally chartered bank. This third "sister" company derives some revenue from the federally chartered bank, but also derives substantial revenues from other sources far in excess of the \$1000 donation it would make. Finally, you state that the Committee anticipates receiving a monetary donation from a company that is a credit union having a branch office located in the Metropolitan Area of Chicago.

In each of these situations, you explain that the donor companies also wish to make in-kind donations to the host committee, consisting of "five computers which will permanently become the property of Chicago's Committee for '96." None of the donor companies purchased the computers from assets derived from federally chartered banks.

The Act prohibits national banks and federally chartered corporations from making contributions or expenditures in connection with elections to any political office. 2 U.S.C. 441b(a). It also prohibits corporations from making contributions or expenditures in connection with any Federal election. However, there are several exceptions to these prohibitions. For example, Commission regulations at 11 CFR 9008.52(c) recognize that local businesses, including local corporations, and other local organizations and individuals may donate funds or make in-kind donations to host committees for certain limited purposes involving promotion of the convention city and providing convention-related facilities and services. These include defraying administrative expenses such as salaries, rent, travel and liability insurance, welcoming convention attendees, providing the use of an auditorium or convention center, providing transportation, law enforcement, or similar convention-related facilities and services.

Local businesses are those located within the Metropolitan Area of the convention city, and those that have a branch office located in the Metropolitan Area of the convention city. 11 CFR 9008.52(c)(2). See 55 Fed. Reg. 12154 (March 30, 1990) for a description of metropolitan areas. You have indicated that each of the prospective donor companies has branch offices within the Metropolitan Area of Chicago. Hence, they would be considered to be local businesses.

Banks, however, are excluded from the exception set forth in 11 CFR 9008.52(c).^{3/} The 1979 Explanation and Justification of a related provision regarding discounts given to convention committees notes that section 441b of the Act prohibits banks from making contributions or expenditures in connection with Federal elections. See Explanation and Justification, 44 Fed. Reg. 63037 (Nov. 1, 1979). It indicates that the "restrictions concerning who may donate funds

to defray convention expenses ... are necessary to insure that such donations are commercially, rather than politically motivated." *Id.* at p. 63038.

In Advisory Opinions 1981-61, 1981-49 and 1980-7, the Commission permitted a holding company of a national bank, a holding company of a federally chartered savings and loan association, and a wholly owned subsidiary of a federally chartered savings and loan association, respectively, to make contributions in connection with state and local elections, provided that the funds used to make the contributions did not result from the operation of the federally-chartered entities. However, the Commission did not allow contributions to be made or used, directly or indirectly, in connection with any Federal election.

With respect to the holding company, subsidiary company, and sister company described in your request, the situation is similar in that bank funds would not be used in connection with a Federal election. Although the Presidential national nominating convention is an election under 2 U.S.C. 431(1)(B), the funds would be used to promote the city of Chicago, and to provide certain facilities and services. In addition, the funds donated by the companies associated with national banks are not derived from those banks.^{4/} Accordingly, the Commission concludes that the Committee may accept the donations from the holding company, subsidiary company and sister company described in your request. See Advisory Opinion 1995-31. This conclusion is predicated upon the presumption that the parent, subsidiary, and sister companies you describe are distinct legal entities, and not merely the agents, instrumentalities or alter egos of their associated state or Federal banks. See Advisory Opinion 1980-7.

With respect to the acceptance of monetary or in-kind donations from local credit unions, the Commission notes that two provisions of the Act recognize that credit unions whose accounts are insured by the National Credit Union Administration are distinct from state banks or federally-chartered banks. See 2 U.S.C. 431(8)(B) (loans not treated as contributions) and 2 U.S.C. 432(h) (campaign depositories). The term "bank" as it is used in 11 CFR 9008.52 does not encompass credit unions. Accordingly, the Commission concludes that the Committee may accept the monetary and in-kind donations from the local credit union described in your request.

You also ask whether the Committee may accept monetary donations of \$100.00 and in-kind donations from the presidents of the donor companies, provided that the donations are not reimbursed by the companies. The in-kind donations consist of volunteering "ten hours of personal time to provide in-kind professional consulting services," which would be "rendered during time not involving employment activities, and will not utilize any facilities or services of the donor company or any of its branch office locations."

Commission regulations at 11 CFR 9008.52(c) permit local individuals to donate funds and make in-kind donations to a host committee to be used for a variety of purposes such as promoting the city, facilitating commerce, defraying construction costs in the convention center, and defraying the city's additional costs for transportation or law enforcement.

Local individuals are individuals who reside in the Metropolitan Area of the convention city. You state that the president of each company resides within the Metropolitan Area of

Chicago. Consequently, the presidents of the donor companies would be considered local individuals.

Therefore, the Commission concludes that nothing in the Act or Commission regulations precludes the presidents of the companies described above from using their personal funds to make these donations to the Committee. Similarly, the company presidents may donate their uncompensated personal time. The exception for volunteer services at 11 CFR 100.7(b)(3) would be applicable.

The Committee's acceptance of monetary and in-kind donations from the companies or individuals you describe (other than the donation of uncompensated personal time) triggers an obligation to comply with the recordkeeping and reporting requirements of the Act. 2 U.S.C. 437 and 11 CFR 9008.51(b). Note that the value of an in-kind donation is the price of the goods or services in the market from which they ordinarily would have been purchased at the time of the donation. Cf. 11 CFR 100.7(a)(1)(iii) (value of in-kind contributions determined by usual and normal charge). The documentation required under 2 U.S.C. 432(c) and regulation sections 102.9 and 104.14 must be preserved and available for audit, inspection or examination by the Commission for at least three years after the filing of the report to which the documentation relates. See 2 U.S.C. 432(d) and 11 CFR 102.9(c) and 104.14(b)(3).

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Danny L. McDonald
Chairman

Enclosures (AOs 1995-31, 1981-61, 1981-49 and 1980-7)

1 The Commission understands that your use of the terms "company" or "companies" refers to corporations, and that the credit union is also incorporated.

2 The Commission notes that the monetary and in-kind transactions you describe as "contributions" would constitute "donations" under Commission regulations at 11 CFR 9008.52.

3 The term "bank" is not defined in the convention regulations in 11 CFR Part 9008.

4 The Commission assumes that these entities can demonstrate that their revenue is sufficiently large to make these donations from non-bank income. See Advisory Opinions 1995-31, 1981-61, 1981-49 and 1980-7.