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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

## AGENDA ITEM

For Meeting of: 5-11-00

### MEMORANDUM

TO: The Commission

FROM: Commissioner Karl Sandstrom

DATE: May 4, 2000

SUBJECT: AO 2000-05

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I am offering alternate language to modify this AO from the "blue draft" which was discussed at our last open session. I appreciate the Office of General Counsel's attempt to resolve the complicated issues implicated by this opinion, and my proposal for alternate language is similar to alternative "B" offered by the Office of General Counsel. However, this proposal more strictly limits the opinion to the questions and issues presented by the requestor and does not refer the requestor to regulations and opinions upon which the requestor should not necessarily rely, and which may lead to more questions than they answer.

For ease of discussion I am attaching my proposed version of the opinion to this memo. The changes that I propose are in italics and are underlined.

Attachment

1 ADVISORY OPINION 2000-05

2  
3 Markham C. Erickson  
4 McGuinness & Holch  
5 400 North Capitol Street, N.W.  
6 Suite 585  
7 Washington, D.C. 20001  
8

9 Dear Mr. Erickson:

10 This responds to your letter dated March 30, 2000, on behalf of the Oneida Nation  
11 of New York ("the Nation"), requesting an advisory opinion concerning the application of  
12 the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission  
13 regulations to contributions by the Nation totaling more than \$25,000 annually.

14 The Nation is a Federally-recognized Indian tribe located in central New York  
15 State. It is a non-corporate entity which has been recognized by the United States on a  
16 government-to-government basis. *See* 65 FR 13298, 13300 (March 13, 2000).<sup>1</sup> The  
17 Nation has previously contributed to Federal candidates, following the \$1,000 limit at 2  
18 U.S.C. §441a(a)(1)(A) for contributions by a person to the authorized committees of a  
19 Federal candidate. The Nation has also voluntarily limited the total of its contributions to  
20 Federal political committees during a calendar year to \$25,000, which is the limit  
21 prescribed at 2 U.S.C. §441a(a)(3).

22 You state that, because 2 U.S.C. §441a(a)(3) applies only to "individuals," the  
23 Nation is considering making contributions this year that would total in excess of  
24 \$25,000. You ask the Commission to confirm that this \$25,000 limitation does not apply  
25 to the Nation.

26 The Act defines the term "person" as including an "individual, partnership,  
27 committee, association, corporation, labor organization, or any other organization or  
28 group of persons, but such term does not include the Federal Government or any authority  
29 of the Federal Government." 2 U.S.C. §431(11); *see also* 11 CFR 100.10. The Act also

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<sup>1</sup> This *Federal Register* document is from the U.S. Bureau of Indian Affairs ("BIA") and lists the Nation, along with numerous other Indian entities, that are "recognized and eligible for funding and services from [BIA] by virtue of their status as Indian tribes." 65 FR at 13298. The "listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes." 65 FR at 13299.

1 provides that no "person" may contribute in excess of \$1,000 to any Federal candidate  
2 and his authorized political committees with respect to any election. 2 U.S.C.  
3 §441a(a)(1)(A). In addressing annual contribution totals, however, the Act and  
4 Commission regulations provide that no "individual" may make contributions  
5 aggregating more than \$25,000 per calendar year. 2 U.S.C. §441a(a)(3); 11 CFR  
6 110.5(b).<sup>2</sup>

7 As you indicate, the Commission has long interpreted the Act's definition of  
8 "person" to include unincorporated Indian tribes, and thus their contributions to Federal  
9 candidates were subject to the \$1,000 per election, per candidate limits.<sup>3</sup> Advisory  
10 Opinion 1978-51; *see also* Advisory Opinions 1999-32 and 1993-12 (where the  
11 Commission stated that, as "persons," unincorporated Indian tribes were subject to the  
12 prohibition on contributions by persons with Federal contracts if they are engaged in such  
13 contracts). Although the Nation is a person under the Act, it is not an individual and is  
14 therefore not subject to the \$25,000 limit on its annual total of contributions.<sup>4</sup> *The Nation*  
15 *may make contributions that are otherwise lawful under the Act and Commission*  
16 *regulations.*

17 *The Commission notes your letter of April 26, 2000, commenting on the General*  
18 *Counsel's proposed draft of this opinion, Agenda Document No. 00-48. Your April 26*  
19 *letter explains that "the Nation's political contributions are made from its general*  
20 *treasury funds . . . [and] are not made, either directly or indirectly, from any incorporated*  
21 *entity."* *The letter further states: "While the Nation does own several incorporated*  
22 *businesses, it has sufficient funds in its general treasury to make all of its political*  
23 *contributions, subject, of course, to the limitations and prohibitions of the Act."* *Since*

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<sup>2</sup> The Act and Commission regulations clarify this restriction by adding that, for the purposes of this limit, any contribution made in a non-election year to a candidate or his authorized committee with respect to a particular election shall be considered as made during the calendar year in which such election is held. 2 U.S.C. §441a(a)(3); 11 CFR 110.5(c)(2); *see also* 11 CFR 110.5(c) (3) and (d).

<sup>3</sup> The status of an Indian tribe or community as a "government" making a contribution has not been explicitly addressed in previous advisory opinions. As indicated by the language of 2 U.S.C. §431(11), the only government that is specifically construed not to be a person, and therefore not subject to the limitations and prohibitions of the Act, is the Federal Government. For example, the Commission has made clear that State governments and municipal corporations are persons under the Act and are subject to its contribution provisions. Advisory Opinions 1999-7, 1982-26, and 1977-32.

<sup>4</sup> As indicated in Advisory Opinion 1999-32, the Nation would more precisely fall into the category of "any other organization or group of persons."

1 you have not requested an advisory opinion on the sources of funds that may be lawfully  
2 used by the Nation in making its contributions in Federal elections, the Commission does  
3 not issue an opinion at this time on that issue.

4 The Commission does not express any views concerning the possible application  
5 of other statutes, including the Indian Gaming Regulatory Act, to political contributions  
6 made by the Nation, since those issues, if any, are not within the Commission's  
7 jurisdiction.

8 This response constitutes an advisory opinion concerning the application of the  
9 Act and Commission regulations to the specific transaction or activity set forth in your  
10 request. See 2 U.S.C. §437f.

11 Sincerely,

12  
13  
14 Darryl R. Wold  
15 Chairman  
16

17 Enclosures (AOs 1999-32, 1999-7, 1998-11, 1993-12, 1982-26, 1978-51, and 1977-32)