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2000 JUL -6 P 3 56

AGENDA ITEM
For Meeting of: 7-13-00

July 6, 2000

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan M. Levin
Senior Attorney

Subject: Draft AO 2000-15

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for July 13, 2000.

Attachment

2
3 Jan Witold Baran
4 Wiley, Rein & Fielding
5 1776 K Street, NW
6 Washington, DC 20006

DRAFT

7
8 Dear Mr. Baran:

9 This responds to your letter dated May 31, 2000, on behalf of the Credit Union
10 National Association, Inc. ("CUNA"), the New York State Credit Union League, Inc.
11 ("New York League"), and the Credit Union Legislative Action Committee ("CULAC"),
12 the separate segregated fund of CUNA, concerning the application of the Federal Election
13 Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the
14 ability of the New York League to solicit its salaried executive and administrative
15 personnel for contributions to CULAC via payroll deduction.

16 ***Background***

17 As noted in Advisory Opinion 1998-19 and by you, CUNA is a trade association,
18 incorporated in the State of Wisconsin as a non-stock, non-profit corporation with
19 members. It is recognized as an organization exempt from Federal income tax under 26
20 U.S.C. §501(c)(6). CUNA was organized for a number of purposes, including the
21 promotion and improvement of business conditions relating to the operation of its State
22 league members and credit union members.

23 Advisory Opinion 1998-19 notes that 51 members of CUNA are leagues
24 representing the 50 States and the District of Columbia. All of the members of the State
25 leagues are State chartered or Federally chartered credit unions. As is the case with the
26 other State leagues, the New York League is incorporated and is tax exempt under 26
27 U.S.C. §501(c)(6). CULAC is the separate segregated fund ("SSF") of CUNA. SSFs
28 established by eight of the State leagues are registered with the Commission as affiliated
29 with CULAC. The New York League has not established an SSF for Federal elections.

30 Advisory Opinion 1998-19 concluded that CUNA is a federation of trade
31 associations in view of the relationships among CUNA, the State leagues, and their
32 member credit unions. That opinion examined the relationships by applying the

1 circumstantial factors set out in Commission regulations that govern the determination
2 whether committees established by two organizations would be affiliated under the Act.
3 *See* 11 CFR 100.5(g)(4)(ii); *see also* 11 CFR 110.3(a)(3)(ii). These included overlapping
4 membership between CUNA and the State leagues, participation by the State leagues in
5 the governance of CUNA, and the significant financial interactions between CUNA, the
6 State leagues, and the member credit unions. *See* 11 CFR 100.5(g)(4)(ii)(B), (D), (G),
7 and (H).¹

8 As a result of this analysis establishing the affiliated relationship between CUNA
9 and the State leagues, Advisory Opinion 1998-19 concluded that the State leagues may be
10 considered as a branches, divisions, or local units of CUNA. Hence, they could act as
11 collecting agents in receiving and transmitting contributions for CULAC.

12 You state that CUNA and the New York League wish to collect contributions to
13 CULAC via payroll deduction from the salaried executive and administrative personnel
14 of the New York League. You ask whether the New York League may institute such a
15 payroll deduction program even though Commission regulations prohibit a corporate
16 member of a trade association from using such a system for contributions by the
17 member's executive and administrative personnel to the trade association's SSF.

18 ***Act and Commission regulations***

19 Under the Act and Commission regulations, a corporation, including an
20 incorporated trade association may use general treasury funds for the establishment,
21 administration, and solicitation of contributions to its SSF, and such support would not
22 result in a contribution to the SSF. 2 U.S.C. §441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii) and
23 114.5(b). An organization such as an incorporated trade association, which is not itself a
24 political committee, but which directly or indirectly establishes, administers or financially
25 supports a political committee is a "connected organization" of that committee. 2 U.S.C.
26 §431(7); 11 CFR 100.6(a) and (c). Furthermore, the regulations explain that

¹ With respect to membership, the opinion referred to the fact that credit union members of State leagues are automatically members of CUNA, that a credit union, in most circumstances, cannot join CUNA unless it belongs to a State league, and that a credit union's withdrawal from State league would result in a forfeiture of CUNA membership. With respect to governance, a quarter of the seats on the CUNA board of directors are reserved for State league presidents. With respect to financial interactions, the opinion refers to the financial support that passes from the credit unions through the State leagues and on to CUNA.

1 organizations that are members of an entity (such as corporate members of a trade
2 association) which establishes, administers or financially supports a political committee
3 are not themselves considered organizations that support that political committee. 11
4 CFR 100.6(b).

5 The connected organization and its SSF are subject to restrictions as to the
6 category of persons who may be solicited for contributions to the committee. 2 U.S.C.
7 §441b(b)(4) and (D); 11 CFR 114.5(g)(1), and 114.8(c). Specifically, an incorporated
8 trade association may solicit its executive and administrative personnel, the families of
9 such personnel, and its unincorporated members. 11 CFR 114.7(a) and 114.8(i)(2).
10 Commission regulations further provide that a corporation may solicit contributions to its
11 SSF from the executive and administrative personnel of its subsidiaries, branches,
12 divisions, and affiliates and their families. 11 CFR 114.5(g). In addition, a trade
13 association may solicit contributions to its SSF from the stockholders and executive and
14 administrative personnel, and the families of such persons, of the member corporations
15 that separately and specifically approve the solicitations and that have not approved a
16 solicitation by any other trade association for the same calendar year. 11 CFR 114.8(c).

17 The regulations state that there is no limitation on the method of soliciting
18 voluntary contributions or the method of facilitating the making of voluntary
19 contributions which a trade association may use. It is further provided, however, that a
20 member corporation may not use a payroll deduction or checkoff system for executive or
21 administrative personnel contributing to the trade association's SSF. 11 CFR 114.8(e)(3).

22 The regulations also discuss federations of trade associations, as follows:

23 (i) A federation of trade associations is an organization representing trade
24 associations involved in the same or allied line of commerce. Such a
25 federation may, subject to the following limitations, solicit the members of
26 the federation's regional, State or local affiliates or members, provided that
27 all of the political committees established, financed, maintained or
28 controlled by the federation and its regional, State, or local affiliates or
29 members are considered one political committee for the purposes of the
30 limitations in §§110.1 and 110.2. The factors set forth at §100.5(g)(4) shall
31 be used to determine whether an entity is a regional, State or local affiliate
32 of a federation of trade associations.

33 (i) The federation and its member associations may engage in a joint
34 solicitation; or

(ii) The member association may delegate its solicitation rights to the federation.
(2) A federation is subject to the provisions of this section when soliciting the stockholders and executive or administrative personnel of the corporate members of its member associations.

11 CFR 114.8(g)(1) and (2).

Any political committees established by organizations that are affiliated under the Act and Commission regulations would be considered as one political committee for the purpose of the Act's limits and may make unlimited transfers to each other. See 2 U.S.C. §441(a)(5); 11 CFR 110.3(a)(1) and 102.6(a)(1). Commission regulations on affiliation indicate that "a parent, subsidiary, branch, division, department, or local unit" of a corporation is an affiliated entity of a connected organization such as corporation. 11 CFR 100.5(g)(2); see also 11 CFR 110.3(a)(1)(ii). Moreover, a parent, subsidiary, branch, division, department, or local unit of a connected organization of an SSF may act as a collecting agent for that SSF. 11 CFR 102.6(b)(1)(iii). A collecting agent is an organization that collects and transmits contributions to an SSF to which the collecting agent is related in a specific way (as defined by Commission regulations)² without thereby incurring an obligation to register and report as a political committee. 11 CFR 102.6(b)(1).³ A collecting agent may pay any or all of the costs incurred in soliciting and transmitting contributions to the SSF. 11 CFR 102.6(c)(2)(i).

Analysis and Application

The New York League is a member corporation of CUNA. Commission regulations prohibit a member corporation from using a payroll deduction or checkoff system for contributions by restricted class personnel to the trade association's SSF. 11

² In addition to the defined category immediately above, collecting agents may be either: (1) a committee, whether or not a political committee, that is affiliated with the SSF under 11 CFR 110.3; (2) the SSF's connected organization; or (3) a local, national, or international union collecting contributions on behalf of any labor federation with which the union is affiliated. 11 CFR 102.6(b)(i), (iii), and (iv).

³ A collecting agent that is not registered and follows the procedures of 11 CFR 102.6(c) is not required to register and report as a political committee provided that it does not engage in other activities such as making contributions and expenditures for the purpose of influencing Federal elections. 11 CFR 102.6(b)(2). The procedures include rules for the timely transmittal of contributions (with related contributor information) collected by the collecting agent on behalf of the SSF. 11 CFR 102.6(c)(4), (5), and (6).

1 CFR 114.8(e)(3). Moreover, Commission regulations state that for the purposes of the
2 definition of "connected organization," organizations that are members of an entity (such
3 as corporate members of a trade association) that is a connected organization of an SSF
4 are not themselves connected organizations of that SSF. 11 CFR 100.6(b). Relevant to
5 this point is the Commission's notation in Advisory Opinion 1989-3 that a member
6 corporation of a trade association did not qualify as a collecting agent for the association
7 when it concluded that it could not use payroll deduction to collect contributions from its
8 employee/ stockholders for the association's SSF. Advisory Opinion 1989-3, n. 2.
9 Section 100.6(b), however, does not preclude an organization from being both a member
10 and having an affiliated relationship with the membership entity, based on criteria set out
11 at 11 CFR 100.5(g). See Advisory Opinions 2000-04 and 1998-19, nn. 2, 18 (which
12 indicate that a member would be an affiliated entity if it satisfied the criteria at 11 CFR
13 100.5(g)).

14 As determined in Advisory Opinion 1998-19, the New York League is not only a
15 member corporation of CUNA. Pursuant to the application of the affiliation factors at 11
16 CFR 100.5(g)(4), the State leagues have been determined to be branches, divisions, or
17 local units of CUNA. Hence, CUNA and the State leagues are affiliated for the purposes
18 of the Act and the State leagues may act as collecting agents for CULAC. The
19 Commission assumes that the New York League does not differ in any material respects
20 from the other State associations in CUNA for the purpose of determining its affiliated
21 status.

22 As an affiliated State organization of CUNA, and hence, as a collecting agent for
23 CUNA, the New York League may pay any and all costs for soliciting and transmitting
24 contributions to CUNA's SSF. See 11 CFR 102.6(c)(2)(i). As is apparent from Advisory
25 Opinion 1998-19, the Commission has interpreted the Act and regulations to permit State
26 or local affiliates of a trade association federation, including affiliates that were also
27 members of the federation, to conduct contribution solicitation and collection activities
28 for the federation's SSF. See Advisory Opinions 1998-19, 1995-17, 1995-12, and 1985-
29 12. In a context not involving trade associations, the Commission has also interpreted the
30 Act and regulations to permit the administration of payroll deduction procedures by one

1 entity for contributions to an affiliated entity's SSF. *See* Advisory Opinions 1987-34 and
2 1982-34.

3 As affiliated entities of CUNA, the State leagues are in the same position as other
4 incorporated affiliates of an SSF's connected organization, such as a subsidiary of a stock
5 corporation, in terms of: the relationship to the SSF of any political committee that might
6 be formed by the affiliate; the ability of the affiliate to collect payroll deducted
7 contributions to its own political committee from its own executive and administrative
8 personnel and the ability of that committee to transfer funds without limit to the SSF;
9 and, even without forming its own political committee, the ability to perform functions
10 for the SSF that the SSF's connected organization may perform. Hence, although the
11 State leagues, such as the New York League, are members of CUNA, their position is
12 significantly different from that of a mere member. The bar in 11 CFR 114.8(e)(3) to the
13 operation by a member corporation of a payroll deduction plan for contributions to a trade
14 association's SSF, therefore, does not apply to the New York League.

15 The New York League may thus collect contributions to CULAC from its salaried
16 executive and administrative personnel via payroll deduction.⁴ The Commission notes,
17 that as collecting agents for CULAC, CUNA and the New York League must follow the
18 procedures set out at 11 CFR 102.6(c), including the timely transmittal of payroll
19 deducted contributions to the SSF. *See* 11 CFR 102.6(c)(4), (5), and (6); *see also*
20 Advisory Opinion 1999-40, n. 10.

⁴ In Advisory Opinion 1998-19, the Commission concluded that the member credit unions of CUNA could also act as collecting agents. However, the Commission refrained from concluding that any PACs of the credit unions would be affiliated with CULAC, stating that such relationships would have to be examined pursuant to 11 CFR 100.5(g)(4). Advisory Opinion 1998-19, nn. 2, 18. Consequently, the conclusions of this opinion do not extend to any member credit union, unless that credit union is determined to be an affiliate of CUNA under the Commission regulations at 100.5(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 2 U.S.C. §437f.

Sincerely,

Darryl R. Wold
Chairman

Enclosures (AOs 1999-40, 1998-19, 1995-17, 1995-12, 1989-3, 1987-34, 1985-12, and 1982-34)