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SUITE HT-2, THE CAPITOL
(202) 225-7103

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ONE HUNDRED EIGHTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515-6328

July 25, 2003

Lawrence H. Norton, General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

*Comment to
AOR 2003-15*

Re: Advisory Opinion Request 2003-15

2003 JUL 28 P 2:57

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Dear Mr. Norton:

As the Chairman and Ranking Minority Member of the House Committee on Standards of Official Conduct, we wish to submit the comments set forth below on the captioned request, which was submitted on behalf of Congresswoman Denise Majette. We hereby request, pursuant to 11 C.F.R. §112.3(b), that the time for comments be extended to enable us to do so.

The subject of the advisory opinion request is Congresswoman Majette's wish to establish, pursuant to regulations issued by the Standards Committee, a Legal Expense Fund for the purpose of paying the legal expenses she has incurred in connection with a particular lawsuit. That lawsuit, *Osburn v. Cox*,¹ raises constitutional and statutory challenges to "crossover voting" in the 2002 Democratic Primary in the 4th Congressional District of Georgia, which she won. The request seeks confirmation that the funds raised and spent by the Legal Expense Fund are not "contributions" or "expenditures" as defined in the Federal Election Campaign Act, and hence are not subject to the provisions of the Act.

Our interest in this matter stems from the Committee's responsibility under the Rules of the House of Representatives to oversee and regulate funds established by House Members and staff for the purpose of paying legal expenses related to their status as a candidate or an officeholder. The Committee has exercised this authority for over twenty years - initially through its authority to issue waivers of the House gift rule, and, since 1996, under a specific provision of the gift rule that took effect that year.

Nevertheless, the device of legal expense funds provides a meaningful alternative to Members for the payment of legal expenses only to the extent that the Federal Election Commission deems those funds to be outside the scope of the Federal Election Campaign Act. Put another way, to the extent that the Commission deems contributions to and

¹ Case No. 1:02-CV-2721 (N. D. Ga.).

expenditures from a legal expense fund to be subject to the Act's limitations, prohibitions and disclosure requirements, there is no reason for separate legal expense funds to exist. We are aware that in numerous advisory opinions on legal expense funds that predate the Bipartisan Campaign Reform Act ("BCRA") – opinions that were issued in a variety of circumstances to candidates for office as well as officeholders – the Commission determined that the fund in question was outside the scope of the Federal Election Campaign Act.²

It appears that the major question presented here is whether the enactment of BCRA, and specifically 2 U.S.C. §441i(e)(1)(A), requires a different result here. Insofar as Members of the House are concerned, that statute provides that neither a Member nor an entity established or controlled by a Member may solicit or spend funds –

in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act. (emphasis added)

With the above background, we wish to make the following points.

First, it is our understanding that in past instances when the Commission considered a fund intended to pay legal expenses incurred in election-generated litigation comparable to that in which Congresswoman Majette has been involved, the Commission determined that the fund was outside the scope of the Federal Election Campaign Act.³ Accordingly, for the Commission to hold that the fund she now wishes to establish would be subject to the Act would mark a significant change.

We are aware of nothing either in the terms of the BCRA, including 2 U.S.C. §441i(e)(1)(A), or in the legislative history of the Act, that specifically mandates such a change. In our view, the absence of any language specifically limiting the use of legal expense funds, or suggesting an intention to do so, is particularly noteworthy in view of both the long history of use of such funds by members of the House and the extensive set of regulations that govern their use.

In this regard, House authorities that recognize the permissibility of legal expense funds date back at least to 1979. In its Final Report, issued in January of that year, the House Select Committee on Ethics noted that –

a legal defense fund must on occasion be established to assist a Member who does not have the personal financial resources to pay substantial legal

² See, e.g., Advisory Opinions 1996-39, 1983-37, 1983-21, 1982-37, 1982-35B, and 1979-37. In addition, in certain specific circumstances, the Commission has held that a fund was subject to the Act. See, e.g., Advisory Opinion 1981-16 (legal services to ensure compliance with the Federal Election Campaign Act), and Advisory Opinion 1980-57 (litigation to force an opponent off the ballot).

³ See, e.g., Advisory Opinions 1983-37 and 1982-35B.

expenses incurred in defending a court action arising out of either a contested election or performance of official duties.⁴

Later that year the Federal Election Commission issued the first advisory opinion of which we are aware holding that a legal defense fund established by a House Member – in that instance, for the purpose of defending against criminal charges and Committee proceedings relating to actions taken in the Member's official capacity – was outside the scope of the Federal Election Campaign Act.⁵

Through 1995 the House Standards Committee regulated the legal defense funds of House Members and staff through the House gift rule then in effect, which required a Committee-issued gift rule waiver for the acceptance of any gift of more than \$250 a year from any source (other than a relative).⁶ In that period it was the Committee's policy to issue a waiver for the acceptance of contributions to a legal expense fund exceeding \$250 only if certain requirements were satisfied, including the following:

- The fund had to be established as a trust that was administered by an independent trustee,
- Trust funds could be used only for legal expenses, and under no circumstances could a trust beneficiary convert the funds to any other purpose,
- No individual or organization could contribute more than \$5,000 in a single year, and
- Contributions to one's legal defense fund exceeding \$250 in a calendar year had to be reported on the beneficiary's Financial Disclosure Statement.⁷

Standards Committee policy regarding legal expense funds was formalized and elaborated upon subsequent to House approval of a revised gift rule that took effect on January 1, 1996. One of the provisions of that rule, which has been in effect continuously since then, allows a Member or staff person to accept "a contribution or other payment to a legal expense fund established for the benefit" of that individual "that is otherwise lawfully made in accordance with the restrictions and disclosure requirements of the Committee on Standards of Official Conduct."⁸ However, the rule explicitly prohibits the acceptance of a contribution or other payment to a legal expense fund from a registered lobbyist or an agent of a foreign principal.⁹

Pursuant to these provisions of the gift rule, on June 10, 1996 the Standards Committee issued a set of Legal Expense Fund Regulations. A copy of those regulations

⁴ *Final Report of the Select Comm. on Ethics*, H. Rep. 95-1837, 95th Cong., 2d Sess. 15 (1979).

⁵ Advisory Opinion 1979-37.

⁶ See, e.g., House Rule 43, cl. 4, 104th Cong., 1st Sess. (1995).

⁷ See *House Ethics Manual*, 102d Cong., 2d Sess. (1992) at 49-50.

⁸ House Rule 25, cl. 5(a)(3)(E), 108th Cong., 1st Sess. (2003).

⁹ *Id.* cl. 5(c)(3).

as currently in effect is enclosed herewith. Among the provisions of the regulations are ones that –

- Define the kinds of matters for which the resulting legal expenses may be paid through a fund,
- Require that any fund be established as a trust that is administered by an independent trustee, *i.e.*, one that has no family, business or employment relationship with the beneficiary,
- Limit use of trust funds to the payment of the subject legal expenses and expenses incurred in soliciting for and administering the trust,
- Limit contributions from any individual or organization to \$5,000 per calendar year,
- Require written approval of the Standards Committee of a completed trust document before any contributions may be solicited or accepted, as well as public disclosure of the trust document,
- Require the filing of publicly available, quarterly reports on donations to and expenditures from the fund, including disclosure of any contribution received from a corporation or labor union, and
- Reiterate the gift rule's prohibition against contributions from either registered lobbyists or agents of foreign principals.

Copies of trust documents approved by the Standards Committee and quarterly reports of contributions and expenditures are made available to the public through the House Legislative Resource Center, which is located in Room B-106 of the Cannon House Office Building. The Legislative Resource Center, which is part of the office of the Clerk of the House, is also the repository of Member, staff and candidate Financial Disclosure Statements.

We believe that the Commission is familiar with the manner in which the rules relating to legal expense funds of House Members are implemented, in that it gave extensive consideration to a Member's Legal Expense Fund in connection with its consideration of Advisory Opinion 2000-40. That opinion indicates that both the Standards Committee's approval letter and the trust document are part of the record of that proceeding.

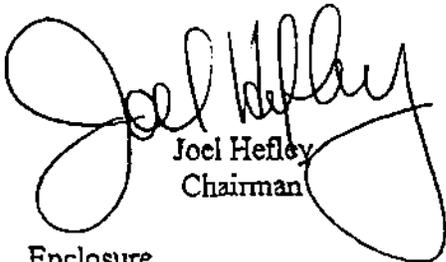
One other point that we wish to address is the availability of campaign funds to pay the legal expenses that a candidate or officeholder incurs in connection with a lawsuit such as the one involved here. It is our understanding that under the provision of the Federal Election Campaign Act on proper use of campaign funds, such legal expenses may be paid with campaign funds. The fundamental test of that provision, which

prohibits the conversion of campaign funds to personal use, is whether the expense involved "would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office."¹⁰ Quite clearly, however, as a matter of logic, the fact that an expenditure of funds would be permissible under this test does **not** mean that the expenditure would be, in the terms of BCRA, "in connection with an election for Federal office." Put another way, under the Federal Election Campaign Act, the mere fact that particular legal expenses **may** be paid with campaign funds does **not** mean that those expenses **must** be paid with campaign funds, to the exclusion of any other donated monies.

Moreover, for the Commission now to hold, in effect, that the legal expenses at issue here must be paid with campaign funds would raise a concern that the Commission recognized in an advisory opinion issued over twenty years ago: that such a holding could result in a dissipation of campaign funds in the payment of expenses incurred in defending lawsuits and other legal proceedings, thereby reducing – perhaps significantly – the ability of the candidate or officeholder to engage in genuine election-related activities. In that advisory opinion, in which the Commission approved the acceptance of donated legal services by a presidential campaign committee, the Commission noted that a different holding could lead to a situation in which such a committee "would have to use up its expenditure limit (and perhaps its funds as well if donated legal services were not available) in defending law suits, rather than campaigning for the Presidency."¹¹ In the years since that opinion was issued, the likelihood of candidates and officeholders becoming enmeshed in lawsuits and other legal proceedings has increased significantly, and thus the concern expressed by the Commission then is even more pressing today.

We appreciate having the opportunity to submit these comments on this matter.

Sincerely,



Joel Hefley
Chairman

Enclosure



Alan B. Mollohan
Ranking Minority Member

¹⁰ 2 U.S.C. §439a.

¹¹ Advisory Opinion 1980-4.

Legal Expense Fund Regulations

MEMORANDUM TO ALL MEMBERS, OFFICERS, AND EMPLOYEES¹⁰⁸

From: Committee on Standards of Official Conduct
Nancy L. Johnson, Chairman
Jim McDermott, Ranking Democratic Member

Date: June 10, 1996

The new gift rule exempts "a contribution or other payment to a legal expense fund established for the benefit of a Member, officer, or employee that is otherwise lawfully made in accordance with the restrictions and disclosure requirements of the Committee on Standards of Official Conduct," as long as the contribution is not from a registered lobbyist or an agent of a foreign principal (House Rule 26, clause 5(a)(3)(E)). In light of this new rule, and pursuant to its authority thereunder, the Committee hereby issues regulations explaining its "restrictions and disclosure requirements" for legal expense funds. The regulations set forth below supersede the Committee's prior policies under the old gift rule¹⁰⁹ and take effect as of July 1, 1996. The prior policies remain in effect until that date.

Legal Expense Fund Regulations

1. A Member, officer, or employee who wishes to solicit and/or receive donations, in cash or in kind, to pay legal expenses shall obtain the prior written permission of the Committee on Standards of Official Conduct.¹¹⁰

¹⁰⁸These regulations have been updated in several respects, including to reflect certain Committee policies established after the regulations were originally issued, and the re-numbering of the House Rules that occurred at the beginning of the 106th Congress.

¹⁰⁹See *House Ethics Manual*, 102d Cong., 2d Sess. 49-50 (1992).

¹¹⁰Permission is not required to solicit and/or receive a donation in any amount from a relative or a donation of up to \$250 from a personal friend.

Appendices

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2. The Committee shall grant permission to establish a Legal Expense Fund only where the legal expenses arise in connection with: the individual's candidacy for or election to federal office; the individual's official duties or position in Congress (including legal expenses incurred in connection with an amicus brief filed in a Member's official capacity, a civil action by a Member challenging the validity of a law or federal regulation, or a matter before the Committee on Standards of Official Conduct); a criminal prosecution; or a civil matter bearing on the individual's reputation or fitness for office.
3. The Committee shall not grant permission to establish a Legal Expense Fund where the legal expenses arise in connection with a matter that is primarily personal in nature (e.g., a matrimonial action).
4. A Member, officer, or employee may accept pro bono legal assistance without limit to file an amicus brief in his or her capacity as a Member of Congress; to bring a civil action challenging the validity of any federal law or regulation; or to bring a civil action challenging the lawfulness of an action of a federal agency, or an action of a federal official taken in an official capacity, provided that the action concerns a matter of public interest, rather than a matter that is personal in nature. Pro bono legal assistance for other purposes shall be deemed a contribution subject to the restrictions of these regulations.
5. A Legal Expense Fund shall be set up as a trust, administered by an independent trustee, who shall oversee fund raising.
6. The trustee shall not have any family, business, or employment relationship with the trust's beneficiary.
7. Trust funds shall be used only for legal expenses (and expenses incurred in soliciting for and administering the trust), except that any excess funds shall be returned to contributors. Under no circumstances may the beneficiary of a Legal Expense Fund convert the funds to any other purpose.
8. A Legal Expense Fund shall not accept more than \$5,000 in a calendar year from any individual or organization.
9. A Legal Expense Fund shall not accept any contribution from a registered lobbyist or an agent of a foreign principal.

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Appendices

10. Other than as specifically barred by law or regulation, a Legal Expense Fund may accept contributions from any individual or organization, including a corporation, labor union, or political action committee (PAC).
11. No contribution shall be solicited for or accepted by a Legal Expense Fund prior to the Committee's written approval of the completed trust document (including the name of the trustee). No amendment of the trust document is effective, and no successor or substitute trustee may be appointed, without the Committee's written approval.
12. Within one week of the Committee's approval of the trust document, the beneficiary shall file a copy of the trust document with the Legislative Resource Center (B-106 Cannon House Office Building) for public disclosure.
13. The beneficiary of a Legal Expense Fund shall report to the Committee on a quarterly basis, with a copy filed for public disclosure at the Legislative Resource Center:
 - a) any donation to the Fund from a corporation or labor union;
 - b) any contribution (or group of contributions) exceeding \$250 in a calendar year from any other single source; and
 - c) any expenditure from the Fund exceeding \$250 in a calendar year.

The reports shall state the full name and street address of each donor, contributor or recipient required to be disclosed. Beginning October 30, 1996, these reports shall be due as follows:

<u>Reporting Period</u>	<u>Due Date</u>
January 1 -- March 31	April 30
April 1 -- June 30	July 30
July 1 -- September 30	October 30
October 1 -- December 31	January 30

14. Any Member or employee who established a Legal Expense Fund prior to July 1, 1996 shall make any necessary modifications to the trust document to bring it into compliance with these regulations and shall disclose the trust document with his or her first quarterly report of the 105th Congress on January 30, 1997. Reports of receipts and expenditures shall be due beginning October 30, 1996, as stated in paragraph 13, above.

Use of Campaign Funds for Legal Expenses

This Committee has stated (in the 1992 *Ethics Manual*) that Members may use campaign funds to defend legal actions arising out of their campaign, election, or the

performance of their official duties. More recently, however, the Federal Election Commission (FEC) issued regulations defining impermissible personal uses of campaign funds, including using campaign funds for certain legal expenses. Any Member contemplating the use of campaign funds for the direct payment of legal expenses or for contribution to a legal expense fund should first contact the FEC.

DIRECT DIAL
(202) 371-7007
DIRECT FAX
(202) 371-7956

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
<http://www.skadden.com>

June 23, 2003

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AOR 2003-22

Via Hand Delivery

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RE: Advisory Opinion Request

Dear Mr. Norton:

We are submitting this advisory opinion request ("AOR") on behalf of the American Bankers Association ("ABA") regarding the application of the Federal Election Campaign Act of 1971, as amended, ("FECA") and Federal Election Commission ("Commission" or "FEC") regulations to ABA's federal separate segregated fund, ABA BankPAC. The ABA is the leading trade association for the banking industry, composed of community, regional, and money-center banks and holding companies, as well as savings associations, trust companies and savings banks. It solicits contributions to ABA BankPAC from executive and administrative personnel of its member corporations that have provided the annual authorization under 11 C.F.R. §114.8(c).

The ABA wants its member corporations to assist in such solicitations by having their executives solicit their fellow executive and administrative personnel at the company and then collecting and forwarding those contribution checks to ABA BankPAC. These contribution checks will be made payable directly to the ABA BankPAC, and any written solicitations will contain the disclaimers required under FEC rules (including, but not limited to, "you may refuse to contribute without reprisal"). We request the Commission to confirm that this practice is permissible under FECA and FEC rules.

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In particular, the Commission recently entered into two conciliation agreements relating to the fundraising activity of corporate members. In MUR 5208 (the "Amboy MUR"), the Commission penalized Amboy National Bank for facilitating the making of contributions by establishing accounts into which an executive's bonus was deposited and then making political contributions from those accounts to candidates and political committees. In MUR 5337 (the "First Consumers MUR"), the Commission penalized First Consumers National Bank for facilitating contributions to its trade association's PAC by coercively soliciting those contributions and not including in its written solicitations the disclaimer that solicitees may "refuse to contribute without reprisal." However, the language used in the conciliation agreements of both MURs implies that an impermissible facilitation would result when there is any effort, no matter how routine, on the part of a corporate member to use its resources to solicit contributions for its trade association's PAC or have its corporate executives collect and forward contribution checks to such PAC.

This language in the conciliation agreements is over-inclusive in that the Commission's rules and advisory opinions ("AOs") permit member corporations to solicit and facilitate contributions on behalf of their trade association's PAC. We can only surmise that the language was over-inclusive because it was in the context of other behavior that ran afoul of the FEC rules. Indeed, Commission rules expressly state that there is no limitation on the method of solicitation or the method of facilitation that a trade association may use to raise funds for its PAC, except that a corporate member may not use a payroll deduction system.¹ 11 C.F.R. § 114.8(e)(3). In AO 1979-8, the Commission opined that this provision extends to the activities of a member corporation as well as to the trade association. The Commission noted that in the history of the rulemaking of 11 C.F.R. § 114.8, the Commission concluded that incidental services by corporate members of a trade association in solicitations for the trade association's PAC were permissible. See AO 1979-8 (citing Federal Election Regulations, Explanation and Justification, House Document No. 95-44, page 114). The AO also opined that a corporate member may pay for the expenses related to administering and soliciting contributions on behalf of its trade association's PAC, as described below.

The fact that 11 C.F.R. § 114.8(e)(3) extends to corporate members is also evident under the plain language of the rule. In particular, the rule prohibits "member corporations" from facilitating contributions through a payroll deduction system, while expressly permitting all other methods of solicitation and facilitation for a trade association PAC. Thus, by referring to "member corporations" in the carve out for payroll deduction systems, the rule necessarily refers to member corporations in the rest of the provision that permits without limitation other forms of solicitation and facilitation.

¹ Please note that this activity is also exempt from the prohibition on corporate facilitation set forth in 11 C.F.R. § 114.2(f). See 11 C.F.R. § 114.2(f)(3)(i).

Moreover, permitting member corporations to solicit and facilitate contributions on behalf of its trade association PAC is good policy. The sole mission of a trade association is to represent and further the interests of its members (in this case, corporate members). In fact, officers from member corporations in many cases make up a trade association's governing board. Dues payments made by members, including corporate members, are also the major source of a trade association's funding, including the funds used to administer the trade association's PAC. Thus, member corporations may stand in the place of its trade association when it comes to soliciting or facilitating contributions on behalf of the trade association's PAC. The Commission has repeatedly recognized the ability of a member corporation to pay for, or incur expenses in connection with, administering and soliciting contributions to the PAC of its trade association. See, e.g., FEC AOs 1979-8, 1986-13, 1982-36, and 1980-59. By the same token, a member corporation should also be permitted to facilitate contributions on behalf of such PAC as set forth in 11 C.F.R. § 114.8(e)(3), which views solicitation and facilitation in the same manner when it comes to trade association PACs.

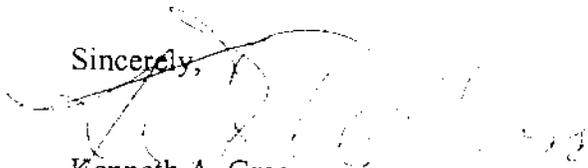
To find otherwise, the Commission would be sanctioning the anomalous result (especially in light of Section 114.8) of permitting a member corporation to pay for the facilitation of contributions to its trade association's PAC (i.e., by paying for the PAC's administrative expenses), but prohibiting the member corporation from facilitating the contributions itself. Moreover, messengers from a member corporation's mail department would be permitted to deliver solicitations on behalf of a trade association's PAC, but they would be prohibited from collecting the solicited checks in a later pick-up. Such results would be contradictory, and at best, based on artificial distinctions.

Please note that under this approach, establishing accounts into which an executive's bonuses are deposited and then used to contribute to a PAC (as was primarily at issue in the Amboy MUR) would still be prohibited in that such activity would constitute a payroll deduction that is expressly prohibited under 11 C.F.R. § 114.8(e)(3). Moreover, solicitations without appropriate disclaimers and related concerns (as was primarily at issue in the First Consumers MUR) would also be prohibited.

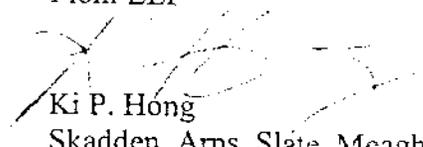
For the reasons described above, we request that the Commission issue an advisory opinion confirming that the ABA may have executives of its corporate members solicit contributions on behalf of ABA BankPAC, and then collect and forward those contribution checks to ABA BankPAC.

Please call with any questions regarding this letter or if you need any further information.

Sincerely,



Kenneth A. Gross
Skadden, Arps, Slate, Meagher &
Flom LLP



Ki P. Hong
Skadden, Arps, Slate, Meagher &
Flom LLP

Attorneys for American Bankers
Association

cc: Rosemary Smith, Esq.



FEDERAL ELECTION COMMISSION

Washington, DC 20463

July 3, 2003

Kenneth A. Gross
Ki P. Hong
Skadden, Arps, Slate, Meagher, & Flom, LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

Dear Messrs. Gross and Hong:

This refers to your letter dated June 23, 2003, on behalf of the American Bankers Association ("ABA") concerning the application of the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the solicitation of contributions to its separate segregated fund, ABA BankPAC.

You state that ABA is a trade association for the banking industry and its membership consists of banks and bank holding companies. It solicits contributions to ABA BankPAC from executive and administrative personnel of the member corporations that have provided the annual authorization under 11 CFR 114.8(c). You state that the ABA wants its member corporations to assist in such solicitations by having their executives solicit their fellow restricted class personnel at the company for contribution checks and then collect and forward the checks to ABA BankPAC. You state that the contribution checks will be made payable directly to ABA BankPAC, and that any written disclaimers will contain the disclaimers required under Commission rules (e.g., the voluntariness language). You also state that the proposed activities would not include the establishment of accounts into which corporate personnel could deposit bonuses and then withdraw funds for contributions to ABA BankPAC. You ask whether the Act and Commission regulations permit the corporate executives to engage in solicitations for ABA BankPAC.

The Act authorizes the Commission to issue an advisory opinion request in response to a "complete written request" from any person about a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). 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 Office of General Counsel shall determine if a request is incomplete or otherwise not qualified as an advisory opinion request. See 11 CFR 112.1(d).

In view of the above requirements, this Office will need further detail as to the proposed activities of the executives of the member corporations. You should describe the methods that the executives will use to solicit, orally and/or in writing, the other restricted class employees, and how corporate facilities will be used. Your answer should include, but not be limited to, the following information that will be applicable to your situation:

- (1) A description of all categories of persons (e.g., ABA, member corporations, or corporate executives) who will be creating and distributing the solicitations, including solicitations created by ABA and mailed to the corporation for distribution.
- (2) A description of all categories of persons (e.g., ABA, member corporations, or corporate executives), who will determine the timing and the frequency of the corporate executive's solicitation or distribution of solicitation materials, and identify the anticipated frequency of such solicitations.
- (3) The methods the soliciting executives will use to collect the contributions, including the distribution of envelopes and stamps. Please confirm that the contribution checks will be transmitted to ABA BankPAC and not first deposited in the soliciting executive's account or a corporate account first.
- (4) Whether the solicitations will be made in conjunction with events held by the member corporation or by the soliciting executive, such as a luncheon or a party, and whether contributors will be offered a memento or other inducement to contribute, paid for by the member corporation or the soliciting executive.
- (5) How and to what extent the corporate member's facilities and non-restricted class personnel (such as meeting rooms, stationery, the member's network server, equipment, office equipment, and corporate secretarial and other support staff) will be used to create and distribute oral and/or written solicitations, and to collect contributions, and whether these activities will occur during compensated work hours.

If other activities by the corporate members relating to solicitation are contemplated in your request, please describe them.

For your information and guidance, we enclose Advisory Opinions 2000-04 and 1997-9. Upon receipt of your responses, this Office will give further consideration to

Letter to Kenneth A. Gross and Ki P. Hong
Page 3

your inquiry. If you have any questions about the advisory opinion process, the enclosed opinions, or this letter, please contact Jonathan Levin, a senior attorney in this Office, at 202-694-1542.

Sincerely,



Rosemary C. Smith
Acting Associate General Counsel

Enclosure

Advisory Opinions 2000-04 and 1997-9

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000

FAX: (202) 393-5760

<http://www.skadden.com>

DIRECT DIAL
(202) 371-7007
DIRECT FAX
(202) 371-7956

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July 10, 2003

Via Hand Delivery

Rosemary C. Smith, Esq.
Acting Associate General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20005

RE: Supplemental Response Relating to Advisory Opinion Request

2003 JUL 10 P 1:50
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Dear Ms. Smith:

This is in response to your letter, dated July 3, 2003, in which you request additional information regarding the advisory opinion request ("AOR") that was submitted on behalf of the American Bankers Association ("ABA") on June 23, 2003. In particular, the following separately responds to the specific requests contained in that letter. As is apparent from these responses, generally, neither the ABA nor ABA BankPAC directs corporate members as to how they should solicit, collect or transmit contributions to ABA BankPAC. However, ABA would like to provide guidance to its corporate members as to what methods for soliciting, collecting and transmitting contributions to ABA BankPAC are permissible under the Federal Election Campaign Act of 1971, as amended ("FECA").

Notwithstanding our responses, we note that many of the requests ask for information regarding the involvement of corporate members and their executives in the solicitation of contributions to ABA BankPAC. This is, however, irrelevant to the AOR in that the AOR relates to whether corporate members and their executives may collect and forward contributions to ABA BankPAC. Indeed, the Federal Election Commission ("FEC") has repeatedly made clear that corporate members may be involved in, and incur expenses related to, soliciting contributions for a trade association's PAC. See, e.g., FEC, AO 1979-8.

Rosemary C. Smith, Esq.
July 10, 2003
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Request #1: A description of all categories of persons (e.g., ABA, member corporations, or corporate executives) who will be creating and distributing the solicitations, including solicitations created by ABA and mailed to the corporation for distribution.

Response: ABA and ABA BankPAC officers and staff will be creating and distributing solicitations to the corporate members of ABA that have authorized the solicitation of their restricted class under 11 C.F.R. § 114.8(c). Executives of such member corporations may, at their discretion, prepare and distribute additional solicitation material, but this is neither required nor requested by ABA or ABA BankPAC.

Request #2: A description of all categories of persons (e.g., ABA, member corporations, or corporation executives), who will determine the timing and the frequency of the corporate executive's solicitation or distribution of solicitation materials, and identify the anticipated frequency of such solicitations.

Response: ABA and ABA BankPAC request authorization from corporate members to solicit their restricted class and distribute solicitation materials to corporate members that grant such authorization. This is done as part of an annual BankPAC fund-raising effort. The member corporations decide on the frequency and timing of the solicitations made to their own restricted class. The corporate members vary on the frequency and timing they choose for their solicitations. Thus, we cannot anticipate what the frequency of the solicitation will be.

Request #3: The methods the soliciting executives will use to collect the contributions, including the distribution of envelopes and stamps. Please confirm that the contribution checks will be transmitted to ABA BankPAC and not first deposited in the soliciting executive's account or a corporate account first.

Response: ABA does not dictate the method(s) to be used by its corporate member executives in collecting contributions on behalf of ABA BankPAC, but would like to provide guidance to its corporate members on the methods permitted under FECA. Each member corporation will have to determine for itself which of the permissible methods it will use. In providing guidance to its corporate members, ABA wants to give its corporate members the option of (1) providing envelopes and postage for the contributions to be mailed directly to ABA BankPAC, and/or (2) collecting and forwarding the contributions to ABA BankPAC, as described in the AOR.

Contribution checks will be transmitted to ABA BankPAC and will not be deposited into the account of either the soliciting executive or the member corporation. Corporate members will not be permitted to use a payroll deduction system for transmitting contributions to ABA BankPAC.

Rosemary C. Smith, Esq.
July 10, 2003
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Request #4: Whether the solicitations will be made in conjunction with events held by the member corporation or by the soliciting executive, such as a luncheon or a party, and whether contributors will be offered a memento or other inducement to contribute, paid for by the member corporation or the soliciting executive.

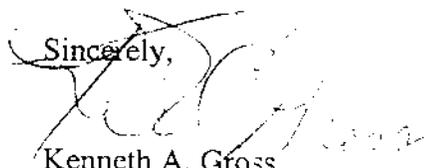
Response: ABA does not require or request that member corporations hold events in conjunction with soliciting contributions, or offer a memento or other inducement, to contribute to ABA BankPAC. However, corporate members may, at their own discretion, hold and pay for such events or provide a memento or incentive. As set forth in the AOR, it is well established that the member corporations may "...pay for, or incur expenses in connection with, administering and soliciting contributions to the PAC of its trade association." We have no reason to believe that a corporate executive will pay for any solicitation event, memento, or incentive to contribute to ABA BankPAC.

Request #5: How and to what extent the corporate member's facilities and non-restricted class personnel (such as meeting rooms, stationery, the member's network server, equipment, office equipment, and corporate secretarial and other support staff) will be used to create and distribute oral and/or written solicitations, and to collect contributions, and whether these activities will occur during compensated work hours.

Response: The extent to which a corporate member's facilities and nonrestricted class personnel would be used to create and distribute oral and/or written solicitations, and to collect contributions, and when those activities will occur is up to the discretion of the corporate member involved. Given that ABA BankPAC is providing prepared solicitation materials, it is anticipated that the use of corporate facilities and nonrestricted personnel will be minimal.

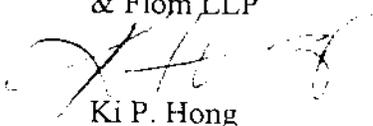
If you have any further questions, please call us.

Sincerely,



Kenneth A. Gross

Skadden, Arps, Slate, Meagher
& Flom LLP



Ki P. Hong

Skadden, Arps, Slate, Meagher
& Flom LLP

Attorneys for American Bankers
Association

cc: Jonathan Levin, Esq.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
<http://www.skadden.com>

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DIRECT FAX
(202) 371-7956

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July 24, 2003

Via Hand Delivery

Jonathan Levin, Esq.
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RE: Follow-Up on Advisory Opinion Request

Dear Mr. Levin:

This is a follow-up to our recent conversation regarding the advisory opinion request ("AOR") that was submitted on behalf of the American Bankers Association ("ABA") on June 23, 2003. In particular, we want to confirm that the solicitations made by executives of ABA member corporations, as described in the AOR, will be made in compliance with Federal Election Commission ("Commission") rules.

Thus, we request that the Commission limit its Advisory Opinion in this case to the question of whether executives of member corporations are permitted to collect and forward contribution checks to the ABA BankPAC. This may include, but is not necessarily limited to, the executives manually collecting and forwarding the contribution checks themselves; using the member corporation's inter-office mail system to help collect the checks; and providing envelopes and postage in which contributors can send their contributions to ABA BankPAC. Otherwise, the Commission should base its Advisory Opinion on the facts and arguments as set forth in the AOR and our supplemental letter, dated July 10, 2003.

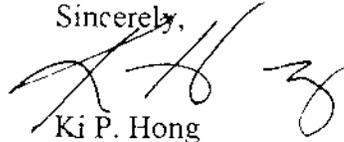
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COUNSEL

Jonathan Levin, Esq.
July 24, 2003
Page 2

If you have any further questions, please call us.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. P. Hong', with a stylized flourish at the end.

Ki P. Hong
Skadden, Arps, Slate, Meagher
& Flom LLP

Attorney for American Bankers
Association

cc: Rosemary C. Smith, Esq.