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BRUCE D WILLIS
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September 17, 1991

N. Bradley Litchfield
Associate General Counsel
Federal Election Commission
999 E Street, N. W.
Washington, D.C. 20463

Re: Advisory Opinion Request 1991-22

Dear Mr. Litchfield:

Comment On
1991-22

315 23 1.15 22

You told me when we spoke earlier this month that the Commission will not consider the above Advisory Opinion Request until late September or early October. I am therefore taking this opportunity to make a comment that I would like included in your file.

First, let me make it clear that I am writing to you in my individual capacity, although, as I believe you know, I am Vice Chair of the Minnesota Ethical Practices Board. I am writing to you specifically with regard to the submission you received with regard to the above Request from Martha J. Casserly, Special Assistant Minnesota Attorney General, dated July 31, 1991, which was styled as "Comment of the State of Minnesota Ethical Practices Board and Minnesota Attorney General."

SEP 23 11:35

Ms. Casserly is the very able Special Assistant Attorney General assigned to provide legal advice to the Ethical Practices Board. In fact, I believe that I may have given you her name, among others, when you asked for Minnesota contacts who might be interested in providing the Commission with views of the Minnesota law contrary to those expressed in Mr. Kelley's

N. Bradley Litchfield
September 17, 1991
Page 2

Advisory Opinion Request. I do not intend by this letter to analyze the substance of the comments submitted by Ms. Casserly. However, I do want you to know that it is my judgment that they should be considered as the comments of the Minnesota Attorney General, not as the comments of the Minnesota Ethical Practices Board and the Minnesota Attorney General.

This matter was before the Ethical Practices Board for the first time at its regular meeting on August 22, 1991, three weeks after the comments were submitted to you, and it was therefore essentially an information item only. I indicated at that meeting that I thought it was inappropriate for the comments to be represented as those of the Board as well as those of the Attorney General, and I stated that I intended to apprise you of that view.

There has never been any consideration by the Ethical Practices Board of the position, if any, that it should take with regard to the legislation in question. While the Minnesota Attorney General is charged by law with the responsibility of defending the constitutionality of acts of the legislature, it is my judgment that simply because the legislature gives the Board administrative responsibilities under a law, the Board is under no similar obligation, and certainly not without an affirmative decision of the Board to assume that position. The problem here perhaps arises from the fact that the Board is represented by the Attorney General's Office, so the lines can get blurred. However, once again, the Ethical Practices Board at no time considered the Advisory Opinion Request and determined that it should take a position one way or the other on the constitutionality of the Minnesota State Congressional Campaign Reform Act, Minn. Stat. §§ 10A.40 through 10A.51.

You also should know that I am not entirely unbiased on the issue. While I did not testify on the bill that became law last year, I did testify before legislative subcommittees during prior sessions on proposed legislation that closely paralleled the provisions of the law that is the subject of the above Advisory Opinion Request. It was, and is, my strong personal belief that state legislation providing for the public financing of federal elections is preempted by the Federal Election Campaign Act of 1971, as amended.

Please let me know if you need any further clarification of the foregoing.

Very truly yours,



Bruce D. Willis

**N. Bradley Litchfield,
September 17, 1991
Page 3**

**cc: William M. Heaney, Chair,
Minnesota Ethical Practices Board**

**Vanne Hayes, Secretary,
Minnesota Ethical Practices Board**

**Elsa Carpenter,
Minnesota Ethical Practices Board**

**Douglas R. Ewald,
Minnesota Ethical Practices Board**

**Emily Anne Staples,
Minnesota Ethical Practices Board**

**Mary Ann McCoy, Executive Director,
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**Jeanne L. Olson, Assistant Director,
Minnesota Ethical Practices Board**

**Martha Casserly,
Special Assistant Attorney General**

Douglas A. Kelley

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