



FEDERAL ELECTION COMMISSION  
WASHINGTON DC 20463

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April 2, 1992

**MEMORANDUM**

TO: The Commission  
THROUGH: John C. Surina  
Staff Director  
FROM: Lawrence M. Noble  
N. Bradley Litchfield  
SUBJECT: Draft AO 1992-7

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for April 9, 1992.

Attachment

**AGENDA ITEM**  
For Meeting of: April 9, 1992

1  
2  
3 **ADVISORY OPINION 1992-7**

4 **James H. Ingraham**  
5 **Secretary and**  
6 **Associate Corporate Counsel**  
7 **H & R Block, Inc.**  
8 **4410 Main Street**  
9 **Kansas City, MO 64111**

**DRAFT**

10 **Dear Mr. Ingraham:**

11 **This responds to your letter dated February 10, 1992,**  
12 **requesting an advisory opinion on behalf of H & R Block, Inc.**  
13 **("Block" or "the company"), a Missouri corporation, and its**  
14 **separate segregated fund, H & R Block Political Action**  
15 **Committee ("BLOCKPAC") concerning the application of the**  
16 **Federal Election Campaign Act of 1971, as amended ("the**  
17 **Act"), and Commission regulations to the solicitation of**  
18 **contributions to BLOCKPAC.**

19 **In the past, BLOCKPAC has solicited and accepted**  
20 **voluntary political contributions from Block's executive and**  
21 **administrative employees. BLOCKPAC now proposes to solicit**  
22 **voluntary contributions from Block's "major franchisees,"**  
23 **"satellite franchisees," and their executive and**  
24 **administrative employees. You request an advisory opinion as**  
25 **to whether BLOCKPAC may solicit such franchisees and their**  
26 **executive and administrative employees for contributions.**

27 **Since 1955, Block has been operating offices engaged**  
28 **primarily in the preparation of Federal, state, and local**  
29 **income tax returns. Since 1957, Block has granted franchises**  
30 **to others to operate such offices in certain areas of the**  
**country. In 1965, Block began to grant franchises only for**

3 smaller communities, generally with populations of 15,000 or  
4 less and has referred to such franchises as "satellite  
5 franchises." Prior to 1965, Block granted franchises, known  
6 as "major franchises," for larger areas, such as larger  
7 cities, one or more counties, or all or part of a state, and  
8 permitted major franchisees to grant subfranchises within  
9 their franchise territories.

10 As of last year, Block and its franchisees operated  
11 8,955 offices throughout the United States, and in Canada,  
12 Australia, New Zealand, and Europe. Of these offices, 4,087  
13 were owned and operated by Block and 4,868 were owned and  
14 operated by franchisees. Twenty-two major franchisees  
15 operated 848 franchised offices and had an additional 599  
16 subfranchised tax offices in their areas. A total of 2,133  
17 satellite franchisees operated 3,421 offices. You do not  
18 include the personnel of the 599 subfranchised tax offices in  
19 your request.<sup>1/</sup>

20 The majority of the revenues generated at company-owned  
21 and franchised offices come from the income tax preparation  
22 services. In addition, Block and its franchisees have  
23 offered electronic filing services, and refund anticipation  
24 loan services (assistance in applying for a bank loan secured  
25 by an anticipated refund). Block and some of the franchisees  
26 also conduct instructional courses in the fall to train  
27

28 <sup>1/</sup> The Commission notes that you have submitted, as part of  
29 you request, copies of a Major Franchise Agreement and a  
30 Satellite Franchise Agreement, but not a subfranchise  
agreement.

*Stop yellowing*

3 preparers. These additional services are known as "related  
4 services."

5 The Commission's response depends upon whether the  
6 franchisees are affiliated with Block. A corporation may  
7 "solicit the executive or administrative personnel of its  
8 subsidiaries, branches, divisions, and affiliates and their  
9 families." 11 CFR 114.5(g)(1). The Act and Commission  
10 regulations treat the committees established by the same  
11 corporation or group of persons, including any parent,  
12 subsidiary, branch, division, department, or local unit  
13 thereof as a single committee. 2 U.S.C. §441a(a)(5); 11 CFR  
14 110.3(a)(1)(ii). See 11 CFR 100.5(g)(2). The regulations  
15 clarify the term "local unit," stating that it may include,  
16 in appropriate cases, a franchisee or licensee. 11 CFR  
17 100.5(g)(2) and 110.3(a)(1)(ii). The regulations also  
18 provide that, in the absence of certain automatically  
19 affiliated relationships, such as a parent corporation and  
20 its subsidiary, the Commission may examine specific factors  
21 in the context of the overall relationship between  
22 organizations to determine whether such factors are evidence  
23 of affiliation between organizations. 11 CFR 100.5(g)(4) and  
24 114.5(g)(1).

25 Included in these factors are (1) whether an  
26 organization has the authority or ability to direct or  
27 participate in the governance of another organization through  
28 provisions of constitutions, bylaws, contracts, or other  
29 rules, or through practices and procedures; (2) whether an  
30

3 organization has the authority or ability to hire, appoint,  
4 demote, or otherwise control the officers, or other  
5 decisionmaking employees or members of another organization;  
6 and (3) whether an organization had an active or significant  
7 role in the formation of another organization. 11 CFR  
8 100.5(g)(4)(ii)(B), (C), and (I). See 11 CFR  
9 110.3(a)(3)(ii).<sup>2/</sup>

10 In previous advisory opinions addressing affiliation of  
11 franchisees or licensees to the granting corporation, the  
12 Commission has found affiliation to exist on the basis of ~~X~~ *JK*  
13 the corporation's control over business policies, practices,  
14 and procedures of an entity and the extent of the entity's  
15 contractual obligations to the corporation. See Advisory  
16 Opinion 1988-46, 1979-38, 1978-61, and 1977-70. See also  
17 Advisory Opinion 1985-31. This basis is similar in effect to  
18 two of the regulatory factors cited above. By contrast, the  
19 Commission, in Advisory Opinion 1985-7, found that the degree  
20 of influence held by a corporation, Anheuser-Busch, over its  
21 wholesale distributors was insufficient to establish  
22 affiliation. The relationship "reflect[ed] more the  
23 characteristics of a typical business contract between two  
24 independent and separate entities, as distinguished from the  
25 relationship where one entity exercises pervasive supervision  
26 and direction over the daily operations and business policies  
27

28  
29 <sup>2/</sup> Commission regulations at 11 CFR 100.5(g)(4)(ii) and  
30 110.3(a)(3)(ii) list ten such factors but indicate that this  
list is not exhaustive.

3 of another entity such as a franchisee." Advisory Opinion  
4 1985-7.

5 The materials submitted by you indicate continuing  
6 control and direction by Block in the licensing of and use of  
7 service marks by both the major and satellite franchises.

8 Under both franchise agreements, Block grants to the  
9 franchisee the exclusive right to use the name and service  
10 mark "H & R Block" and any other name or service mark adopted  
11 or registered by Block for use in the operation of income tax  
12 preparation services and the performance of related services  
13 (e.g., "NATION'S LARGEST TAX SERVICE") from a location or  
14 locations within a specified franchise territory. The  
15 franchisee must operate its business of preparing income tax  
16 returns and related services under Block's licensed marks  
17 only. The franchisee may not use Block's licensed marks for  
18 any other purpose without Block's written permission.<sup>3/</sup>

19 Under both types of agreements, the franchisee covenants  
20 not to compete with Block or other franchisees in tax return  
21 preparation or related services during the duration of the  
22 franchise and for a period following termination or transfer  
23 of the agreement. The Major Franchise Agreement covenant is  
24 not limited to competition within a specified area, while the  
25 Satellite Agreement specifies a mileage radius. Both types  
26

27  
28 <sup>3/</sup> There are also significant and restrictive licensing  
29 agreements for both types of franchises with respect to the  
30 provision of the electronic filing service, which is made  
available to all franchisees and used by a substantial  
majority.

3 of franchises are also subject to prohibitions on divulging  
4 trade information or methods.

5 In addition to the licensing, trade information, and  
6 territorial restrictions, your materials indicate Block's  
7 continuing control or direction with respect to Block  
8 policies, restrictions, and procedures governing daily  
9 operations of both major and satellite franchises. These  
10 include requirements as to the accurate preparation of  
11 returns, hours of operation, maintenance and condition of  
12 offices, quality and appearance of supplies and equipment,  
13 employment of sufficient well-trained personnel, and ;  
14 procedures pertaining to related services such as electronic  
15 filing (including refund anticipation loans). You state that  
16 the "standards, policies, and procedures imposed by Block  
17 upon its satellite franchisees are even more stringent than  
18 those imposed upon major franchise owners," noting explicit  
19 requirements (which appear in the "Franchisee's Conduct of  
20 Business" clause) pertaining to payments of tax penalties and  
21 maintenance of liability insurance, and other requirements.

22 Under the Major Franchise Agreement, any material and  
23 substantial breach of its terms by the franchisee constitutes  
24 grounds for termination of the agreement by Block. The  
25 Satellite Agreement may be terminated for a material and  
26 substantial breach of the franchise agreement or the  
27 electronic filing agreement, or for "other good cause."

28 There are explicit provisions for the implementation of a  
29 timely cure and for arbitration. Some breaches, however, are  
30

3 not curable, such as a nonpayment of indisputable royalties  
4 continuing for 30 days beyond a notice of nonpayment.

5 Block provides extensive training, guidance, and  
6 oversight for the franchises. Block provides major and  
7 satellite franchise owners with extensive instruction and  
8 advice concerning the setting up of and management of their  
9 offices. This includes furnishing guidelines in the  
10 selection and location of offices, furnishing information  
11 necessary to establish an operating budget, designing forms  
12 to be used in tax return preparation, making training  
13 materials available for use by the franchisee in training  
14 employees, and, if requested, assistance in handling  
15 managerial or other problems. Moreover, the ~~satellite~~  
16 ~~Agreement~~ provides that Block will train the franchisee and  
17 provide certain necessary equipment without charge (other  
18 than freight). Both agreements also provide for the sale to  
19 the franchisee of certain office supplies, forms, and  
20 equipment; if the franchisee does not purchase these items,  
21 he or she must purchase items of similar appearance and of  
22 the same quality or better.

23 You state that satellite franchisees are assigned to a  
24 specific "satellite director/district manager of Block"  
25 located in the general area of the satellite territory.  
26 Major franchisees are assigned to a Block regional manager.  
27 As soon as possible after a ~~Satellite~~ ~~Agreement~~ is signed,  
28 the satellite director will train the new owner in conducting  
29  
30

3 the business.<sup>4/</sup> Satellite directors work with old and new  
4 satellite owners, through frequent visits, calls and  
5 satellite complex meetings, and regional managers hold a  
6 yearly regional convention for satellite owners for time  
7 management training. Satellite owners may be visited  
8 intermittently by auditors from Block's Internal Audit  
9 Department in order to assure compliance with the franchise  
10 agreement and Block's policies and procedures.

11 Major franchisees or their representatives are visited  
12 intermittently by Block regional directors or vice  
13 presidents. The auditors also visit the franchise offices to  
14 assure compliance. The major franchisees or their  
15 representatives also attend twice yearly operations meetings  
16 at national headquarters or elsewhere.<sup>5/</sup>

17 According to the franchise agreements, the books and  
18 records of major and satellite franchisees are open to  
19 inspection by Block during regular business hours, and major  
20 franchisees shall ship such records to Block upon request.

21 The franchise agreements also impose restrictions upon  
22 the transferability of the franchises. Block's prior written  
23 approval is necessary for any assignment or transfer of  
24

25  
26 <sup>4/</sup> Initial training of major franchisees took place many  
27 years ago although they have, in recent years, received  
substantial training in electronic filing and automated tax  
preparation at corporate headquarters in Kansas City.

28 <sup>5/</sup> According to the franchise agreements, the books and  
29 records of major and satellite franchisees are open to  
30 inspection by Block during regular business hours, and major  
franchisees shall ship such records to Block upon request.

3 interest in the franchise, including approval rights after a  
4 franchisee's death, other than transfers to a "controlled  
5 entity" (discussed below). If the proposed transferee is a  
6 corporation or partnership, but not a controlled entity, the  
7 franchisee will inform Block about each officer and director,  
8 and the ownership interest of each shareholder of the  
9 transferee. The franchisee will also give Block information  
10 as to a director or partner, the "principal," who will  
11 personally assume the obligations of the franchise agreement  
12 and to whom Block will look, in addition to the proposed  
13 transferee, for proper performance. The principal must be  
14 approved by Block.

15 If the transferee is a controlled entity, i.e., a  
16 corporation or partnership in which the franchisee or the  
17 franchisee's immediate family holds a majority voting or  
18 controlling interest, then the franchisee must provide Block  
19 with notice of the transfer. The franchisee remains  
20 personally liable for the obligations of the proposed entity  
21 until another principal is appointed and approved by Block or  
22 the franchise agreement is transferred or assigned to a  
23 transferee approved by Block.

24 Based on the above information, it appears that Block  
25 has a substantial degree of participation and control over  
26 the policies, practices, and daily operations of both the  
27 major franchises and the satellite franchises. The ability  
28 to grant a franchise and the franchise agreements' granting  
29 of pre-approval authority for assignment and transfer, and  
30

3 some authority as to termination, also give Block some degree  
4 of authority over who the franchise's decisionmakers will be.  
5 In addition, Block seems to have control over the formation  
6 of the franchises. Although the franchisees may have engaged  
7 in tax preparation practice before, the person or entities,  
8 in order to function as H & R Block franchises, must be  
9 granted the license to operate as such by Block. See  
10 Advisory Opinion 1990-22.

11 The Commission concludes, therefore, that Block or  
12 BLOCKPAC may solicit voluntary political contributions from  
13 the executive and administrative personnel, and the families  
14 thereof, of Block's major and satellite franchisees. See 11  
15 CFR 114.1(c). Block and its SSF may also solicit  
16 contributions from the franchisees themselves as long as they  
17 are not corporations, e.g., if they are individuals or  
18 partnerships. See Advisory Opinions 1988-46 and 1983-48.  
19 The designated "principals" of incorporated franchisees would  
20 qualify, under the terms of the franchise agreements, as  
21 franchisees. This conclusion is limited to the solicitations  
22 of executive and administrative employees of the Block  
23 franchise itself. Without further information as to the  
24 make-up of incorporated franchisees, this opinion does not  
25 reach those who have no executive or administrative employee  
26 relationship with a Block franchise.

27 ~~The Commission notes that Block has franchises in~~  
28 Canada, Australia, New Zealand, and Europe. The Act and  
29 Commission regulations prohibit the making of a contribution  
30

3 by a foreign national, or the solicitation or acceptance of a  
4 contribution from a foreign national with respect to any  
5 election. 2 U.S.C. §441e(a); 11 CFR 110.4(a)((1) and (2).<sup>6/</sup>  
6 Block and BLOCKPAC may, therefore, not solicit or accept  
7 contributions from employees who are foreign nationals. The  
8 Act and regulations do not, however, prohibit, the  
9 solicitation or acceptance of contributions from executive  
10 and administrative employees who are not foreign nationals,  
11 even if they work for a foreign subsidiary of the recipient  
12 U.S. entity. Advisory Opinions 1982-34 and 1979-59.

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

17  
18 Sincerely,

19  
20 Joan D. Aikens  
21 Chairman for the  
22 Federal Election Commission

23 Enclosures (AOs 1990-22, 1988-46, 1985-31, 1985-7, 1983-48,  
24 1982-34, 1979-59, 1978-61, and 1977-70)

25  
26  
27  
28 <sup>6/</sup> A foreign national is a foreign principal as defined in  
29 22 U.S.C. §611(b), or an individual who is not a U.S. citizen  
30 or lawfully admitted for permanent residence, as defined in 8  
U.S.C. §1101(a)(20). 2 U.S.C. §441e(b); 11 CFR 110.4(a)(4).