



FEDERAL ELECTION COMMISSION

WASHINGTON, D. C.

**CONCURRING OPINION OF
COMMISSIONER TREVOR POTTER
TO ADVISORY OPINION 1992-16**

On June 25, 1992, I voted with the majority of the Commission in finding that Nansay Hawaii, a domestic (U.S.) entity incorporated in the state of Hawaii, may utilize net earnings generated from its properties in the United States to make political contributions to state and local candidates. Despite the fact that Nansay Hawaii is a wholly owned subsidiary of Nansay Corporation of Japan, I believe the circumstances outlined by the requester comply with the Federal Election Campaign Act and Commission regulations concerning contributions from foreign nationals found at 2 U.S.C. § 441e and 11 CFR 110.4.

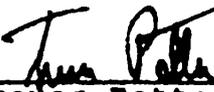
First, we are informed that Nansay Hawaii is a U.S. corporation, incorporated under the laws of Hawaii and primarily engaged in real estate development and management in that state. As the Advisory Opinion issued by the Commission points out, under 22 U.S.C. § 611(b), a corporation organized under the laws of any state within the United States, with a principal place of business within the United States, is not a foreign principal and, accordingly, would not be a foreign national under 2 U.S.C. § 441e.

Second, although Section 441e prohibits contributions by foreign nationals through other persons, that is not the case here. As outlined by the Advisory Opinion Request, only U.S. citizens or individuals admitted to permanent residency will be making decisions concerning contributions or expenditures in connection with U.S. elections. The opinion issued by the Commission makes clear the predicate is Nansay Hawaii's assertion that only the non-foreign national Board members, who presently constitute both a quorum and a majority of the Board, will be empowered to make election-related decisions sitting as a special committee in consultation with the company's president and the chief financial officer, both of whom are U.S. citizens. Thus the requester is able to satisfy the requirements delineated at 11 CFR 110.4(a)(3), which prohibit foreign national participation in the contribution decision process.

Finally, and perhaps most importantly, all Nansay Hawaii political contributions will come from profits from its U.S. investments, and not from subsidization by the foreign parent corporation. Nansay Hawaii owns several parcels of real estate

in Hawaii, either directly or as a general partner in a limited partnership. The Commission's Advisory Opinion is specifically conditioned on the requirement that "[t]he subsidiary must be able to demonstrate through a reasonable accounting method that it has sufficient funds in its account, other than funds given or loaned by its foreign national parent, from which the contribution is made." Further, the Advisory Opinion states that "[t]he amount that the foreign parent distributes to the subsidiary cannot replenish all or any portion of the subsidiary's political contributions during the period since the preceding subsidy payment. The parent should make this review each time it makes payments to its U.S. subsidiary, and must reduce its subsidy if indicated by such review."

In light of this rigorous standard, which is an essential element of the Advisory Opinion's conclusion, I voted for Advisory Opinion 1992-16. Should Nansay Hawaii, or another company similarly situated, fail to meet this exacting standard, then of course they may not rely upon the Commission's Opinion in AO 1992-16 as protection from legal liability.



Trevor Potter
Commissioner

September 14, 1992