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C. FREDERICK SCHUTTE  
(1921-1988)

WRITERS DIRECT DIAL NUMBER

March 18, 1992

Office of General Counsel  
Federal Election Commission  
Washington, D.C. 20463

Re: Request for Advisory Opinion

Dear Sir:

This office represents Nansay Hawaii, Inc., a corporation organized under the laws of the State of Hawaii and engaged primarily in the business of real estate development and management. Nansay Hawaii, Inc.'s principal place of business is in the State of Hawaii.

The Board of Directors of Nansay Hawaii, Inc. is made up of five individuals, two of whom are United States citizens. The By-Laws of Nansay Hawaii, Inc. provide that a majority of the Directors shall constitute a quorum to transact business and that any act or business must receive the approval of a majority of such quorum. See By-Laws, Article III, Section 8. The By-Laws also permit the Board to create and appoint a general or special committee "as the business of the company may require . . ." (Article III, Section 12).

The President of the organization, also a Director, is a United States citizen. Nansay Hawaii owns several parcels of developed and undeveloped real estate within the State of Hawaii, either directly or as a general partner in a Hawaii limited partnership. Nansay Hawaii, Inc. derives revenue from lease rents, sales, and other related revenues from its developed properties in Hawaii. At least two of the properties, an office building and a resort hotel, generate substantial positive cash flow; that is, income exceeding expenses excluding debt service. However, to meet the debt service with respect to both the developed and undeveloped

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March 18, 1992

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properties, Nansay Hawaii receives regular subsidies in the form of loans or contributions to capital from its foreign national parent.

Nansay Hawaii, Inc. proposes to make political contributions to candidates for state and local offices and is aware that United States law prohibits contributions to federal candidates from corporations. Additionally, Nansay Hawaii, Inc. is aware that federal law also prevents foreign nationals from making campaign contributions in federal, state, or local elections (2 U.S.C. § 441e, 11 C.F.R. 110.4), that the definition of "person" includes a corporation, that the definition of "foreign national" includes "foreign principal," and that a foreign corporation is prohibited from making a campaign contribution "through any other person."

Similarly, Nansay Hawaii, Inc. is aware of the Federal Election Commission's advisory opinions in Gem of Hawaii (Advisory Opinion No. 89-29, 12/19/89) and Asahi Jyuken/Kuilima Development (Advisory Opinion No. 89-10, 10/27/89). Nansay Hawaii requests this advisory opinion because of what appears to be a substantial unanswered question with respect to what level or proportion of U.S.-generated revenues versus subsidies from a foreign parent is sufficient to allow the domestic corporation to make campaign contributions in state and local elections. Further, the Gem of Hawaii majority opinion, the dissenting opinion in the Gem of Hawaii case from Commissioner Danny McDonald and Commissioner Scott Thomas, and the CIT Group Holdings advisory opinion (Advisory Opinion No. 1990-8) left unanswered substantial questions with respect to corporate decision-making in the context of election-related decisions of a domestic corporation which is a wholly owned subsidiary of a foreign national.

With respect to the first issue, that is, the level or proportion of the United States revenues acquired, it appears that in the Gem of Hawaii case, the Commission observed that Gem "derives its revenues from merchandise and sales and other related ventures in Hawaii," which permitted Gem to make contributions. In the Kuilima case, the Commission observed that Kuilima "was predominantly funded by a foreign national parent; whose projects were not yet generating income . . .," which disqualified Kuilima from making contributions. Unfortunately, this leaves a substantial gray area between entities which derive virtually

all revenues in the United States and entities "whose projects were not yet generating income." Nansay proposes to make political contributions from the operating account of the entities or profit centers which generate net operating revenues to the corporation. As with any other expense which would decrease the net operating revenues of the corporation, these expenses may result in an increase in the subsidies from the foreign national parent.

Nansay Hawaii, Inc. requests an advisory opinion from the Federal Election Commission as to the legality of the proposed political contributions under 2 U.S.C. § 441e, 11 C.F.R., and any other applicable federal statutes or regulations.

Secondly, Nansay Hawaii, Inc. proposes to create a committee appointed by the two United States citizen members of the Board of Directors and would be composed of one or more United States citizen senior management employees and charge that committee with authority to make all election-related decisions. Non-United States citizen members of the Board of Directors of Nansay Hawaii, Inc. would not participate or vote on the selection of the members of this committee or participate in the corporate resolution empowering the committee to make all election-related decisions. It is intended by this proposal that all election-related decisions by Nansay Hawaii, Inc. be made exclusively by United States citizens.

As set out above, the By-Laws of Nansay Hawaii, Inc. provide that a majority of the Directors constitute a quorum to transact business and any act of business must receive the approval of a majority of such quorum. The By-Laws also authorize the Board to create and appoint committees as the business of the company may require. Nansay Hawaii would comply with the requirements of the By-Laws as to quorum and as to the requirement that any act or business receive approval of a majority of such quorum.

Nansay Hawaii, Inc. requests an advisory opinion from the Commission with respect to the legality of this proposal under 2 U.S.C. § 441e, 11 C.F.R., and any other applicable federal statutes or regulations.

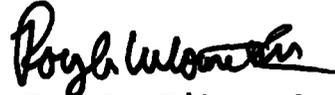
Nansay Hawaii, Inc. would like to thank the Commission for its consideration of this request for an

March 18, 1992

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advisory opinion and, if the Commission has any questions or requires any additional information, please contact me at 808-329-5811.

Very truly yours,

A handwritten signature in black ink, appearing to read "Roy A. Vitousek III". The signature is written in a cursive style with a prominent initial "R".

Roy A. Vitousek III

for

CADES SCHUTTE FLEMING &  
WRIGHT



FEDERAL ELECTION COMMISSION  
WASHINGTON D C 20463

April 8, 1992

Roy A. Vitousek, III  
Cades, Schuette, Fleming & Wright  
Hualalai Center  
75-170 Hualalai Road  
Suite B-303  
Kailua-Kona, Hawaii 96740

Dear Mr. Vitousek:

This refers to your letter dated March 18, 1992, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the involvement of a U.S. subsidiary of a foreign corporation in state and local elections.

You represent Nansay Hawaii, Inc. ("the company"), a corporation engaged primarily in real estate development and management. It is organized under the laws of Hawaii and has its principal place of business in that State. The company's By-Laws provide that a majority of the directors constitute a quorum to transact business and that any act or business must receive the approval of a majority of the quorum. The Board also may create and appoint special committees. You state that the company's board of directors is made up of five individuals, two of whom are U.S. citizens. One of the citizens is the company's president.

Nansay Hawaii owns several parcels of developed and undeveloped real estate in Hawaii, either directly or as a general partner in a limited partnership. The company derives revenue from lease, sales, and other income from its developed Hawaii properties, and at least two of the properties "generate substantial positive cash flow; that is income exceeding expenses excluding debt service." To meet the debt service with respect to both developed and undeveloped properties, the company receives "regular subsidies in the form of loans or contributions to capital from its foreign national parent."

You state that Nansay Hawaii wishes to make contributions to state and local candidates but is concerned as to whether the company has sufficient funding from its own domestic operations so as not to be in the position of Kullima, the requester in Advisory Opinion 1989-20, which was funded predominantly by its foreign national parent. Nansay

Hawaii proposes to make political contributions "from the operating account of the entities or profit centers which generate net operating revenues to the corporation." You indicate that such contributions may result in an increase in subsidies from the foreign national parent.

Nansay Hawaii is also concerned about the lawfulness of its process of making election-related decisions. The company proposes to create a committee, appointed by the two Board members who are U.S. citizens, which would be charged with the authority to make all election-related decisions. It would be composed of senior management employees who are U.S. citizens. Board members who are not U.S. citizens would not participate in the selection of the committee members or in the corporate resolution empowering the committee to make all election-related decisions.

You seek an advisory opinion as to the legality of proposed contributions by the company and the selection of the decision-makers on election-related matters.

The Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). Commission regulations explain that such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the transaction is made." 11 CFR 112.1(c).

In view of the cited requirements, you will need to answer the following questions:

- (1) State whether any of the non-U.S. citizen Board members are nonetheless lawfully admitted for permanent residence in the United States, as defined in 8 U.S.C. §1101(a)(20).
- (2) Please describe the voting process by which the company would decide to create the committee to make the election-related decisions. Include in your description the contents of any resolution whereby the decision was made to create the committee and what limits or conditions, if any, are placed on those choosing the members or those serving on the committee.
- (3) Describe the role of the Board in determining the aggregate amount of political contributions by the corporation, such as through the budget review process or other financial planning.
- (4) Please describe more fully the proposed source of the contributions. Include in your response a description of what the "operating account" is, what its

Letter to Roy A. Vitousek, III

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significance is as compared with the company's other accounts, and what portion of it is funded by foreign entities.

This office notes that you have referred to two properties "generating substantial positive cash flow" and to entities generating net revenues, but we still do not have a comprehensive overview of all company operations in the U.S. or elsewhere. A brief description by you of the company's overall operations and its most recent annual report or similar documents, would be of assistance to us in responding to your request.

For your information and guidance, I have enclosed a copy of Advisory Opinion 1990-8. If you have any questions about the enclosed opinion, this letter, or the advisory opinion process, please contact the undersigned.

Lawrence M. Noble  
General Counsel

BY:

  
N. Bradley Litchfield  
Associate General Counsel

Enclosure

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WRITERS DIRECT DIAL NUMBER

May 4, 1992

N. Bradley Litchfield
Office of General Counsel
Federal Election Commission
Washington, D.C. 20463

AOR 1992-16

Re: Request for Advisory Opinion from Nansay
Hawaii, Inc.

Dear Mr. Litchfield:

This is a response to your letter of April 8, 1992,
in which you requested that Nansay provide the Commission
with additional factual information as to proposed
contributions to candidates for state and local elections.
In order to complete our written request for an advisory
opinion, may we offer the following information:

"(1) State whether any of the non-U.S. citizen Board members are
nonetheless lawfully admitted for permanent residence in the
United States, as defined in 8 U.S.C. §1101(a)(20)."

As of the date of this letter, two of the four members
of Nansay Hawaii, Inc.'s Board of Directors are United States
citizens. We are informed that of the two non-U.S. citizens
one of them has been lawfully admitted for permanent
residence in the United States. We understand that the other
non-United States citizen Director is a resident of Japan.

"(2) Please describe the voting process by which the company would
decide to create the committee to make the election related
decisions. Include in your description the contents of any
resolution whereby the decision was made to create the
committee and what limits or conditions, if any, are placed
on those choosing the members or those serving on the
committee."

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Inssofar as the Board of Directors of Nansay Hawaii, Inc. has not acted to create a committee to make election-related decisions, there remains some flexibility on the part of the Board.

The President of Nansay Hawaii has proposed that the Board of Directors would consider a resolution which would authorize the establishment of a special committee made up of the two United States citizen members of the Board of Directors and empower the committee to make all election-related decisions on behalf of the Corporation. The committee could then either make election-related decisions itself or delegate the authority to make election-related decisions to specific senior management employees of Nansay Hawaii, Inc. who are also United States citizens. The resolution creating the committee and appointing the United States citizen members of the Board of Directors to the committee would be considered and voted on by a majority of the directors who attend a duly noticed regular or special meeting of the Board of Directors.

- "(3) Describe the role of the Board in determining the aggregate amount of political contributions by the corporation, such as through the budget review process or other financial planning."

The Board of Directors would play no direct role in determining the aggregate amount of political contributions. The aggregate amount of political contributions would be determined by the special committee in consultation with Nansay Hawaii, Inc.'s president and chief financial officer, both of whom are United States citizens.

- "(4) Please describe more fully the proposed source of the contributions. Include in your response a description of what the "operating account" is, what its significance is as compared with the company's other accounts, and what portion of it is funded by foreign entities."

As discussed in the letter of March 18, 1992, the source of funds for the proposed state and local campaign contributions will be the operating accounts of two of Nansay Hawaii's developed properties. These operating accounts are separate bank accounts maintained by Nansay Hawaii and into which are deposited the receipts from operations of these

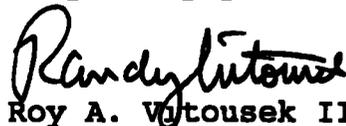
Federal Election Commission  
May 4, 1992  
Page 3

properties and from which the expenses of operations, including debt service, are paid.

Nansay Hawaii has experienced and does anticipate continuing to experience net positive cash flow from the operations of these entities' activities. One property is a resort located on the Island of Kauai from which Nansay Hawaii anticipates a net earnings of approximately \$444,000 in 1992, after debt service. The other property, an office building in downtown Honolulu, will experience approximately \$58,000 in earnings in 1992, again, after payment of debt service.

I hope that this information adequately responds to your questions and that the Commission can now proceed to offer an advisory opinion relative to these facts. If you have any questions or require any additional information please contact me at (808) 329-5811.

Very truly yours,



Roy A. Vitousek III  
for

CADES SCHUTTE FLEMING & WRIGHT