

245 First Street SW
Washington D C 20024
(202) 226-4083
FAX (202) 225 1561

APR 30 1992

April 30, 1992

92 MAY -4 PM 3:45

The Honorable Joan D. Aikens
Chairman
Federal Election Committee
999 E Street, N W
Washington, D C. 20463

Dear Chairman Aikens,

At the request of members of the Executive Committee (Mrs. Lloyd Bentsen and Mrs. J. Bennett Johnston) of The National Fund for the United States Botanic Garden, we would like a clarification involving our raising money from Members of Congress to build an educational garden to commemorate the bicentennial of the United States Congress.


The National Garden, as it will be known, will consist of five distinctly American spaces devoted to native plants from different geographic regions of the country, and a special section dedicated to our national flower, the rose. In addition to the landscaped grounds, the National Garden will feature a Nature Resource/Education Center, to include teaching facilities and specialized tools and equipment for the handicapped. I have enclosed further information to familiarize you with our organization and the National Garden.

We plan to offer current and former Members of Congress the opportunity to give their tangible support to this unique project, in the form of individualized, engraved granite pavers to be used in the pathways surrounding the aforementioned education center. This would not only be a profitable and reasonable way to generate funds for this project being constructed in their honor, but would allow them a personal stake in a worthwhile project that will serve as a source of pleasure, beauty and learning to all who visit it.

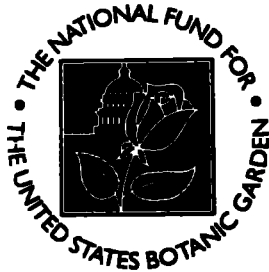
We would like to have a letter from you stating your position on Members' use of campaign monies in regard to support of this project. It would certainly be worthwhile to us to be able to assure Members they could use their personal or campaign monies to purchase their granite paver, at the cost of \$1000 each.

As we intend to start approaching Members in June with this proposition, we respectfully request and would greatly appreciate a letter of response from you as soon as possible.

Sincerely,



Karen Carlin
President & CEO



Executive Board

CHAIRMAN
Mr Charles E Cooke
VICE CHAIRS
Mrs Lloyd Bentsen
Mrs John Heinz
Mrs J Bennett Johnston
FINANCE COMMITTEE
CO CHAIRS
Mr William McSweeney
Mr Jeffery Capron
SECRETARY/COUNSEL
Mr Herbert Stevens
TREASURER
Mr Larry J Burks
PRESIDENT & CEO
Karen Carlin

Board of Trustees

HONORARY TRUSTEES
Mrs Jimmy Carter
Mrs Gerald Ford
Mrs Lyndon B Johnson
Mrs Richard M Nixon
Mrs Ronald Reagan

Mr Joe Albritton
Mrs Norman Augustine
The Hon Howard Baker
Ms Paula Blanchard
The Hon Lindv Boggs
The Hon Harry Byrd
The Hon Robert Byrd
The Hon Larry Coughlin
Mrs Thomas Foley
The Hon Bob Graham
The Hon Ralph Hall
Mrs Dennis Herel
The Hon Nancy Johnson
Mr George Lawrence
The Hon Jerry Lewis
Mr Mannv Livaudias
Mrs Robert Livingston
Mr Michael Mandel
Mrs John Mashek
Mr John Montgomery
The Hon Daniel Patrick Moynihan
The Hon David Nagle
The Hon Nancy Pelosi
The Hon John Porter
Mr Manuel Silberstein
The Hon Ted Stevens
The Hon Strom Thurmond
The Hon John Warner
Mr Lew Wasserman
The Hon Alan Wheat
Mrs Timothy Wirth

EX OFFICIO
The Hon George White
Architect of the Capitol

THE NATIONAL GARDEN AT THE UNITED STATES BOTANIC GARDEN

"To everything there is a season..."

Ecclesiastes 3: 1-8

Every experienced gardener understands nature's cycle of life: youth and freshness give way to maturity; propagation and elimination of weakened elements ensure continuation of species, and each turning season brings the promise of strong, new growth. The experienced gardener values this continuous cycle of change in all aspects of garden development. As the oldest botanic garden in the country, the United States Botanic Garden (USBG) has experienced many seasons of change, and through the years has flowered into an extraordinary public garden. In response to a renewed public interest in "getting back to nature," the USBG now stands on the threshold of an exciting new season of growth.

First proposed by George Washington in 1796 as a place to grow and preserve plants that might be important to the nation's economy, it was established in 1820 as an educational display garden chartered by Congress "...to collect, cultivate, and grow various vegetable products of this and other countries for exhibition and display...". It continues today to be a valuable resource; a living library whose natural beauty and commitment to scientific integrity encourage its visitors to learn by experiencing. It is currently one of the top ten attractions in our Nation's Capitol, with more than 2 million visitors annually.

**The National Garden at The United States Botanic Garden
Page 2**

The essence of the USBG is preserved in its Conservatory, a glittering crystal palace which houses permanent collections of tropical, subtropical, economic, and desert plants. Over the years, weather and age have significantly weakened its superstructure, and the lightweight aluminum alloy which has safely and beautifully served the Conservatory since 1933 is currently being removed. The new renovations to the Conservatory will provide distinct environmental control of each glasshouse, and will brighten its interior, benefitting plant collections and visitors alike. But most importantly, the renovations will be finished with respect to the preservation of the building's historic design and, at the same time, will use the latest technological advances to insure the integrity and future of the USBG.

While the USBG gets back to its roots through renovation, it is actively looking toward its future. The Joint Committee on the Library has taken a leadership role in revolutionizing the USBG's mission to serve and educate the public by the creation of the National Garden. Public Law 100-458 of October 1, 1988, authorized the Architect of the Capitol, subject to the direction of the Joint Committee on the Library, to "construct a National Garden demonstrating the diversity of plants, including the rose, our national flower, to be located between Maryland and Independence Avenues, S.W..., " in the District of Columbia.

The National Garden, which will be the only monument to commemorate the Bicentennial of Congress, will have outstanding selections of ornamental and useful plants from various regions of the nation, and will serve to educate the public on the great diversity of American plants. A special section will be dedicated to rare species, hybrids and cultivars of our national flower: the rose.

The National Garden at The United States Botanic Garden

Page 3

Nestled near the base of the United States Capitol, the site will be an oasis to escape from the hustle and bustle of life in the Nation's Capitol. Enclosed within a decorative and functional wrought iron fence, a tapestry of garden spaces are linked by a common theme: the conservation of species and important cultivars of garden plants. Garden spaces will include an open lawn flanked by perennial borders, an open meadow, midwestern wildflowers, a southeastern bog garden, a northeastern fern glen, and conifers and rhododendrons of the northwest. The collections and displays exhibit plants that are not only native to our soil, but those that are important for their decorative or economic use, preserving the diversity of species for this and future generations.

Visitors will delight in the beautiful surroundings and relish the opportunity to quietly read, relax, or join an educational tour at their leisure. With pathways providing barrier free access for the handicapped and Braille signage, the garden will enable all people to partake of its beauty, and refresh their spirits.

The USBG fulfills its commitment to a long-established tradition of public service through plant and flower shows scheduled throughout the year, and a plant information service provided daily by mail or via telephone. These year-round services are always free of charge. In addition, the USBG cooperates with seed exchange programs, national and Washington area museums, research agencies, scientific journals, and national garden clubs and horticultural societies. The most important aspect of the National Garden lies in its ability to greatly enhance these efforts by affording the USBG the space and facilities necessary to expand current public programs, which include:

PUBLIC PROGRAMS

- * ***The environmental education program focuses on alternative controls for insect and disease problems, soil improvement programs, "right plant, right place" philosophy, and how to deal with erosion and run-off problems***
- * ***Horticultural classes offered fall through spring each year, featuring local and nationally renowned experts on topics of current interest, such as container gardening, landscaping with herbs, and edible landscaping***
- * ***Cooperation with programs to benefit Washington area hospitals, schools, prisons, retirement homes, and city neighborhoods***
- * ***Participatory tours given by horticulture staff and trained volunteers***
- * ***Special events to bring together horticulturists, botanists, landscape architects, horticultural therapists, environmental specialists, and professionals from related fields to circulate scientific developments and ideas***
- * ***Community outreach programs designed to encourage, initiate, and support gardening initiatives to beautify the area and promote further awareness and understanding of gardening techniques and the environment***
- * ***Internship programs which provide a source of training for students interested in horticulture, botany, public relations, urban development, teaching, communications, business, or non-profit management***

To ensure this vision, the National Fund for the United States Botanic Garden, a private, non-profit organization, was incorporated to raise money from public and private sources for the construction of the National Garden. The National Fund has established a Board of Trustees committed to the success of these endeavors. Composed of Members of Congress, Congressional Spouses, Former First Ladies, national civic leaders, and officers of some of the most successful corporations in America, the Board of Trustees represents over 20 states. The 1992-93 Board of Trustees:

HONORARY TRUSTEES: Former First Ladies of The United States

- Mrs. Jimmy (Rosalynn) Carter Georgia
Mrs. Gerald (Betty) Ford California
Mrs. Lyndon B. (Lady Bird) Johnson Texas
Mrs. Richard M. (Pat) Nixon New Jersey
Mrs. Ronald (Nancy) Reagan California

EXECUTIVE BOARD

CHAIRMAN

Mr. Charles E. Cooke Southern California Edison, District of Columbia

VICE CHAIRMAN

Mrs. Lloyd (B.A.) Bentsen Texas

VICE CHAIRMAN

Mrs. John (Teresa) Heinz Pennsylvania

VICE CHAIRMAN

Mrs. J. Bennett (Mary) Johnston Louisiana

FINANCE CO-CHAIRMAN

Mr. William F. McSweeney Retired CEO, Occidental Corporation, District of Columbia

FINANCE CO-CHAIRMAN

Mr. Jeffery Capron McQuade & Capron, District of Columbia

SECRETARY

Mr. Herbert Stevens Kelley Drye & Warren; District of Columbia

ASSISTANT SECRETARY

Mr. Michael Mandel Aiken, Gump, Hauer & Feld; District of Columbia

TREASURER

Mr. Larry J. Burks Co-Operative Rose Growers, Inc.; Texas

PRESIDENT & CEO

Ms. Karen B. Carlin Former First Lady, Kansas

BOARD MEMBERS

- Mr. Joe Allbritton President, Riggs Bank; District of Columbia
Mrs. Norman (Meg) Augustine Maryland
The Honorable Howard Baker Former U.S. Senator, Tennessee
Ms. Paula Blanchard Former First Lady, Michigan
Mrs. John (Sally) Chapoton District of Columbia
The Honorable Corinne C. (Lindy) Boggs Former Member of Congress, Louisiana
The Honorable Harry Byrd Former U.S. Senator, Virginia
The Honorable Robert C. Byrd U.S. Senator, Virginia
The Honorable Larry Coughlin Member of Congress, Pennsylvania
Mrs. Thomas (Heather) Foley Washington
The Honorable Bob Graham U.S. Senator, Florida
The Honorable Ralph M. Hall Member of Congress, Texas
Mrs. Dennis (Cindy) Hertel Michigan
The Honorable Nancy L. Johnson Member of Congress, Connecticut
Mr. George H. Lawrence Akin, Gump, Hauer & Feld; District of Columbia
Mrs. Paul (Carol) Laxalt Nevada
The Honorable Jerry Lewis Member of Congress, California
Mr. E.F. Livaudias Atlantic Richfield Company, District of Columbia
Mrs. Robert (Bonnie) Livingston Louisiana
Mrs. John (Chan) Mashek Florida
Mr. John Montgomery Newspaper Publisher, Kansas
The Honorable Daniel Patrick Moynihan U.S. Senator, New York
The Honorable David Nagle Member of Congress, Iowa
The Honorable Nancy Pelosi Member of Congress, California
The Honorable John Porter Member of Congress, Illinois
Mrs. James (Leone) Reeder Texas
Mrs. Francis (Patricia) Saul Maryland
Mr. Manuel Silberstein Landscape Architect, District of Columbia
The Honorable Ted Stevens U.S. Senator, Alaska
The Honorable Strom Thurmond U.S. Senator, South Carolina
The Honorable John Warner U.S. Senator, Virginia
Mr. Lew R. Wasserman Chairman of the Board & CEO, MCA, Inc.; California
The Honorable Alan Wheat Member of Congress, Missouri
Mrs. Timothy E. (Wren) Wirth Colorado
The Honorable George White (EX-OFFICIO) Architect of the Capitol, District of Columbia

The National Garden at The United States Botanic Garden
Page 7

This distinguished group is committed to leading the USBG and the National Garden into the 21st Century. With their guidance and your support, the National Garden vision will become a reality. Construction will begin in 1992, in conjunction with the renovation of the USBG Conservatory. Both projects will be completed in 1995, in time to celebrate the 175th Anniversary of the founding of the USBG.

This is an historic opportunity to show support for the United States Botanic Garden, and to take part in building a wonderful national monument - the only national monument to be built this decade. Your gift to the National Garden will greatly enrich the Mall and Capitol Hill area, and plant the seeds that will grow into a magnificent public garden. There are many ways to give. You may choose a one-time gift of cash or a multi-year pledge, of a specific amount for as many as three years. All donations are tax-deductible, and all donors will be prominently recognized in a manner appropriate to their level of giving:

NAMED STRUCTURES FOR MAJOR GIFTS
Contributors of \$1,000,000 & Above

The National Garden is designed around three major structures: The Nature Resource/Education Center, the Rose Pergola, and a Fountain/Tent area. Three donors will be given the opportunity to select and name one of these major features after a company or individual. The recognition will be in accordance with the donation and in the manner approved by Congress. The donor will also have the opportunity to be consulted on the design of that structure during the initial phases of the project, and will receive membership in and benefits of the Chairman's National Leadership Council, described below.

CHAIRMAN'S NATIONAL LEADERSHIP COUNCIL

The National Garden at The United States Botanic Garden

Page 8

Contributors of \$200,000 & Above (over 2 year period)

1. Donor will be considered for a position on the Board of Trustees
2. Donor may host two functions in the National Garden upon its completion; one per year for two years
3. Attend annual reception for major contributors to be held in the spring each year
4. Donor's name displayed prominently in the appropriate place of distinction in the garden, (such as a wall).

NATIONAL BENEFACTOR

Contributions of \$100,000 to \$199,999

1. Attend annual spring reception for major contributors
2. Donor's name displayed similarly to level above

NATIONAL PATRON

Contributions of \$50,000 to \$99,999

1. Attend annual spring reception for major contributors
2. Donor's name displayed in the garden area

NATIONAL SPONSOR

Contributions of \$25,000 to \$49,999

1. Donor's name displayed in garden area

All of the above levels will be recognized in our Annual Report to Congress, sent to each Members in the first quarter of the year.

NATIONAL DONOR

Contributions of \$1000 to \$24,999

1. Donor's name engraved on granite pavers or bricks of a similar material to be used in a specific garden area

NATIONAL CONTRIBUTOR

Contributions of \$10 to \$999

1. Donor's name displayed in a book of National Contributors to be kept in the Nature Resource/Education center

Whatever vehicle you choose for expressing your support,

**The National Garden at The United States Botanic Garden
Page 9**

and whatever the amount, you can be sure that your gift will be well used to sow seeds that will establish a very special American garden; a place where commitment to scientific education mingles with the beauty of the surroundings, and visitors are encouraged to become stewards of the land. Future generations will marvel at the foresight and what was accomplished at the United States Botanic Garden in the 1990s, and remember with gratitude all that your gift helped flourish in this season of new growth.

THE NATIONAL GARDEN

The National Garden as a center for environmental education will serve two purposes: to educate the public about plants and their importance to the environment, showing the need to conserve many plant species; and showing how they can be grown and used to enrich our daily lives.

The Garden will be the only living, outdoor botanical display in Washington available for the hands-on experiences required to effectively teach young people about the natural world. The National Garden's programs will instruct visitors on how to become stewards of the land. It will be a multi-generational garden providing opportunities for young and old alike to gain and increase their knowledge of plants and their uses.

The Garden will have a responsibility to educate the broadest range of people possible. In keeping with this commitment, it is designed to be accessible to the handicapped.

The National Garden will be a living laboratory, a place where a commitment to scientific education is mingled with the beauty of the surroundings. As a new American garden on the Mall, it will display the many varieties of our national flower, the rose, as well as other trees, shrubs, herbs and flowers, and will educate the visiting public on the great diversity of American plants.

Public Law 100-456 - October 1, 1988

"Section 307 E The architect of the Capitol, subject to the direction of the Joint Committee of the Library, is authorized to --

(1) Construct a National Garden demonstrating the diversity of plants, including the rose, our national flower, to be located between Maryland and Independence Avenues, SW., and extending from the United States Botanic Garden Conservatory to Third Street, S.W., in the District of Columbia, and

(2) Accept gifts, including money, plants, volunteer time, planning, construction and installation expenses, assistance and implements, and garden structures, on behalf of the United States Botanic Garden for the purpose of constructing the National Garden described in paragraph (1) "



FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

May 14, 1992

**Karen Carlin
President & CEO
The National Fund for the
U.S. Botanic Garden
245 First Street, SW
Washington, DC 20024**

Dear Ms. Carlin:

This refers further to your letter dated April 30, 1992, with enclosures, requesting "clarification" by "letter" from the Federal Election Commission that states our "position" on donations to The National Fund for the United States Botanic Garden ("the Fund") from Members of Congress who wish to use their campaign funds.

Your letter and enclosures state that the Fund was incorporated as a "private, non-profit organization . . . to raise money from public and private sources for the construction of the National Garden." The garden will be located in Washington and within the area adjacent to the present United States Botanic Garden. It "will be the only monument to commemorate the Bicentennial of Congress . . . and will serve to educate the public on the great diversity of American plants."

You propose to solicit \$1,000 each from current and former Members of Congress that will offer them "the opportunity to give their tangible support to this unique project, in the form of individualized, engraved granite pavers to be used in the pathways surrounding" an education center that will be located within the garden. You wish "to assure Members they could use their personal or campaign monies to purchase" their granite paver.

Letter to Karen Carlin
Page 2

The Federal Election Campaign Act of 1971, as amended ("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). The request must concern a specific transaction or activity that "the requesting person plans to undertake or is presently undertaking and intends to undertake in the future." 11 CFR 112.1(b). Inquiries presenting only a general question of interpretation or the activities of third parties do not qualify as advisory opinion requests. The regulations further explain that this office shall determine if a request is incomplete or otherwise not qualified as an advisory opinion request. 11 CFR 112.1(d).

In order to clarify your inquiry and explain the advisory opinion procedures of the Commission, I spoke with you by telephone on May 5. I stated in part that neither this office nor the Commission may give any opinion of "an advisory nature," unless given through the formal process described above and in the cited provisions of law. 11 CFR 112.4(f). I further explained that the proper way to seek an opinion regarding the legal issue raised by your inquiry would be for any Member of Congress to submit a letter asking for an advisory opinion and stating that the Member proposed to make a donation to the Fund from his or her campaign funds.

For your information, the Act and Commission regulations provide that excess campaign funds held by any Member of Congress, in an account of his or her principal campaign committee, may be donated to any organization described in 26 U.S.C. §170(c). 2 U.S.C. §439a, 11 CFR 113.2(b). Our informal contact with the Internal Revenue Service indicates that the Fund has received an advance ruling, expiring in December 1995, that it qualifies as a public charity for purposes of 26 U.S.C. §170(c) and related provisions of the Internal Revenue Code.

Enclosed is a copy of Advisory Opinion 1985-9 which illustrates the application of the cited provisions to a specific donation proposed by Representative James H. Quillen. This opinion is still valid. The Act provides that any person involved in a specific activity, which is indistinguishable in all material respects from an activity described in a past advisory opinion, may rely on the opinion to govern their own situation. 2 U.S.C. §437f(c), 11 CFR 112.5.

Letter to Karen Carlin
Page 3

If after reviewing these materials with your legal counsel you still need an advisory opinion, you should arrange for the submission of a request from a Member who proposes to make a future donation to the Fund from the Member's campaign committee. If you have any further questions about the advisory opinion process, the enclosed opinion, or this letter, please contact Mr. Litchfield. The telephone number is (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


N. Bradley Litchfield
Associate General Counsel

Enclosures

DANIEL P MOYNIHAN
NEW YORK

United States Senate
WASHINGTON, DC 20510-3201

June 3, 1992

AOR 1992-21

Dear Mr. Litchfield:

As a member of the Board of Trustees of the National Fund for the United States Botanical Garden, I write to ask for an advisory opinion concerning a donation to the Garden. The Fund is raising money to establish the National Garden, which will occupy the rest of the block on which the Botanic Garden sits. The Garden will be divided into five areas, each containing native plants from different regions of the country, with another area devoted to our national flower, the rose. In addition, the National Garden will feature a nature/resource education center and a pavilion for educational presentations.

The fund proposes to offer current and former members of Congress the opportunity to support this project by purchasing individualized, engraved granite paving stones to be used in pathways surrounding the education center. I am giving serious consideration to contributing to the Fund by purchasing one of these paving stones with funds from my campaign committee. The fund is tax-exempt under Section 501(c)(3) of the Internal Revenue Code. Please inform me as soon as possible if this is an allowable use of campaign funds.

Sincerely,



Daniel Patrick Moynihan

Mr. N. Bradley Litchfield
Associate General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

92 JUN -3 PM 5:12

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL