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OF COUNSEL
EDWARD F. M. GOOD, M.D., J.D.

June 3, 1993

Mr. Lawrence M. Noble
Office of General Counsel
Federal Election Commission
999 East Street, N.W.
Washington, D.C. 20463

RE: Congressman John J. Duncan, Jr.

Dear Mr. Noble:

AOR 1993-08

We are representing Congressman John J. Duncan, Jr. in the incorporation of his re-election campaign for liability purposes only. However, there is an issue that needs to be resolved before this can be accomplished.

The name of the proposed corporation would be Duncan For Congress, Inc. It would be a non-profit corporation, but would not be tax exempt. A copy of the proposed charter is enclosed. The present campaign funds are held in the account of Duncan For Congress. If incorporated, these funds would be transferred to Duncan For Congress, Inc.

In accordance with 11 CFR 113.2 and T.C.A. §§2-10-114 and 2-10-115, copies of which are enclosed, Congressman Duncan makes contributions from the excess campaign funds to the Republican party on national, state and local levels.

Section 441b of the Federal Election Campaign Laws, 11 CFR 113.4, 11 CFR 114, and T.C.A. §2-19-132(a), prohibit the use of corporate funds in connection with a political campaign, and prohibit corporations from making contributions in connection with any election to any political office. However, T.C.A. §2-19-132(b) states that this prohibition shall not apply to a contribution made by a national committee of a political party which has incorporated in accordance with 11 CFR 114.12(a). Under 11 CFR 114.12(a), a political committee may incorporate, and not be subject to the provisions of part 114, if it incorporates for liability purposes only.

Pursuant to 11 CFR 112.1, we are requesting an advisory opinion on the issue of whether the contributions to the Republican party may still be made by Congressman Duncan, if he incorporates his re-election campaign and places the campaign funds in the corporate account.

Mr. Lawrence M. Noble
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We appreciate your help and assistance in this matter.

Best personal regards,

James H. London
James H. London

JHL:mjt

Enclosures

CHARTER

OF

DUNCAN FOR CONGRESS, INC.

The undersigned, acting as the incorporator of a corporation under the Tennessee Nonprofit Corporation Act, adopts the following Charter for such corporation:

1. The name of the corporation is Duncan for Congress, Inc.
2. This corporation is a public benefit corporation.
3. The street address of the initial registered office of the corporation is 1716 Clinch Avenue, Knoxville, Knox County, Tennessee 37916, and the initial registered agent for the corporation at that office is James H. London.

4. The name and address of the incorporator is:

James H. London
1716 Clinch Avenue
Knoxville, Tennessee 37916

5. The street address of the principal office of the corporation is 815 S. Central Avenue, Knoxville, Tennessee 37902, and the mailing address of the corporation is Darrell Akins, Treasurer, P.O. Box 15171, Knoxville, Tennessee 37901.

6. The corporation is not for profit.

7. The corporation will not have members.

8. Upon dissolution, after all creditors of the corporation have been paid, its assets shall be distributed according to the applicable federal and/or state laws.

DATED this _____ day of _____, 1993.

JAMES H. LONDON, INCORPORATOR

(E) The date of such inspection.

(2) Any person making an inspection of such files, statements or records shall present evidence of identification and state the name of the person or organization he represents, if any.

(b) Such record shall be available for public inspection during the normal business hours of the registry of election finance or county election commission. [Acts 1980, ch. 861, § 12; 1984, ch. 683, §§ 4, 7; 1989, ch. 585, § 20; 1990, ch. 943, §§ 5, 6; 1990, ch. 1048, § 4.]

Attorney General Opinions. Record and disclosure of inspection, OAG 89-112 (9/5/89).

2-10-112. [Repealed.]

Compiler's Notes. Former § 2-10-112 (Acts 1986, ch. 780, § 1), concerning contributions from groups headquartered out of state, was repealed by Acts 1989, ch. 585, § 32.

2-10-113. December reports — Reporting period — Filing deadline. — Notwithstanding any other provision of law, rule or regulation to the contrary, if any report is required to be filed in December under the provisions of this part, the date of the reporting period for such report shall end on December 31, and the report shall be filed not later than January 31 of the following year. [Acts 1992, ch. 809, § 1.]

Effective Dates. Acts 1992, ch. 809, § 2. April 29, 1992.

2-10-114. Campaign funds — Allocation of unexpended contributions — Use of funds [Effective January 1, 1993]. — (a) Any candidate for public office in this state with an unexpended balance of contributions after the election shall elect one (1) or a combination of the following for allocation of such funds within sixty (60) days of such election:

- (1) The funds may be retained or transferred to any campaign fund pursuant to Tennessee reporting requirements;
- (2) The funds may be returned to any or all of the candidate's contributors in accordance with a formula or plan specified in the candidate's disclosure of the allocation;
- (3) The funds may be distributed to the executive committee of the candidate's political party;
- (4) The funds may be deposited in the volunteer public education trust fund established under title 49, chapter 3, part 4;
- (5) The funds may be distributed to any organization described in 26 U.S.C. § 170(c);
- (6) The funds may be distributed to an organization which has received a determination of exemption from the United States internal revenue service pursuant to subsection (3) or (4) of 26 U.S.C. § 501(c) if such organization is currently operating under such exemption; and
- (7) The funds may be used to defray any ordinary and necessary expenses incurred in connection with the office of the officeholder. Such expenses may

include, but are not limited to contributions and donations to community

(b) Except as provided in subsection (a), a candidate shall not use any campaign funds either for the candidate's own personal financial purposes or for any other purpose as defined by federal internal revenue code, except as defined by federal internal revenue code, Class two (2) offense as defined in 26 U.S.C. § 170(c);

(c) If the allocation made by the candidate in the post-election report requires a determination of exemption from the post-election report requirement shall be filed within ten (10) days with the same information as required by Acts 1992, ch. 932, § 1.]

Effective Dates. Acts 1992, ch. 809, § 2. January 1, 1993.

2-10-115. Allocation of unexpended contributions [Effective January 1, 1993]. — (a) Any candidate for public office in this state with an unexpended balance of contributions after the election shall elect one (1) or a combination of the following for allocation of such election:

- (1) The funds may be retained or transferred to any campaign fund pursuant to Tennessee reporting requirements;
 - (2) The funds may be returned to any or all of the candidate's contributors in accordance with a formula or plan specified in the candidate's disclosure of the allocation;
 - (3) The funds may be distributed to the executive committee of the candidate's political party;
 - (4) The funds may be deposited in the volunteer public education trust fund established under title 49, chapter 3, part 4;
 - (5) The funds may be distributed to any organization described in 26 U.S.C., § 170(c);
 - (6) The funds may be distributed to an organization which has received a determination of exemption from the United States internal revenue service pursuant to subsection (3) or (4) of 26 U.S.C. § 501(c) if such organization is currently operating under such exemption;
 - (7) The funds may be used to defray any ordinary and necessary expenses incurred in connection with the office of the officeholder. Such expenses may include, but are not limited to contributions and donations to community
- (b) Except as permitted in subsection (a), a candidate shall not use any campaign funds either for the candidate's own personal financial purposes or for any other purpose as defined by federal internal revenue code, except as defined by federal internal revenue code, Class two (2) offense as defined in 26 U.S.C. § 170(c);
- (c) If the allocation made by the candidate in the post-election report requires a determination of exemption from the post-election report requirement shall be filed within ten (10) days with the same information as required by Acts 1992, ch. 932, § 1.]

include, but are not limited to, the cost of advertisements, membership fees, and donations to community causes.

(b) Except as provided in subsection (a), no candidate for public office shall use any campaign funds either prior to, during or after an election for such candidate's own personal financial benefit or any other nonpolitical purpose as defined by federal internal revenue code. A violation of this subsection is a Class two (2) offense as defined in § 2-10-110(a)(2).

(c) If the allocation made in accordance with subsection (a) is made after the post-election report required by § 2-10-105(c)(4), then a report of the allocation shall be filed within twelve (12) calendar days at the same office and with the same information as required in § 2-10-107 for expenditures. [Acts 1992, ch. 932, § 1.]

Effective Dates. Acts 1992, ch. 932, § 5.
January 1, 1993.

2-10-115. Allocation of unexpended election contributions [Effective January 1, 1993]. — (a) Any candidate for public office in this state with an unexpended balance of contributions after the election shall elect one (1) or a combination of the following for allocation of such funds within sixty (60) days of such election:

(1) The funds may be retained or transferred to any campaign fund pursuant to Tennessee reporting requirements;

(2) The funds may be returned to any or all of the candidate's contributors in accordance with a formula or plan specified in the candidate's disclosure of the allocation;

(3) The funds may be distributed to the executive committee of the candidate's political party;

(4) The funds may be deposited in the volunteer public education trust fund established under title 49, chapter 3, part 4;

(5) The funds may be distributed to any organization described in 26 U.S.C., § 170(c);

(6) The funds may be distributed to an organization which has received a determination of exemption from the United States internal revenue service pursuant to subsection (3) or (4) of 26 U.S.C., § 501(c), if such organization is currently operating under such exemption; and

(7) The funds may be used to defray any ordinary and necessary expenses incurred in connection with the office of the officeholder. Such expenses may include, but are not limited to, the cost of advertisements, membership fees, and donations to community causes.

(b) Except as permitted in subsection (a), no candidate for public office shall use any campaign funds either prior to, during or after an election for such candidate's own personal financial benefit or any other nonpolitical purpose as defined by federal internal revenue code. A violation of this subsection is a Class two (2) offense as defined in § 2-10-110(a)(2).

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with the same information as required in § 2-10-107 for expenditures. [Acts 1992, ch. 978, § 1.]

Effective Dates. Acts 1992, ch. 978, § 8.
January 1, 1993.

2-10-116. Acceptance of honorarium by public official [Effective January 1, 1993]. — (a) The acceptance of an honorarium by a public official in such person's capacity as a public official is prohibited. "Honorarium" means a payment of money or any thing of value for an appearance, speech or article, but does not include actual and necessary travel expenses, meals and lodging associated with such appearance, speech or article.

(b) Acceptance of an honorarium for an appearance, speech or article by a public official in such person's capacity as a private business person, professional or tradesperson is not prohibited. [Acts 1992, ch. 978, § 4.]

Effective Dates. Acts 1992, ch. 978, § 8.
January 1, 1993.

PART 2—REGISTRY OF ELECTION FINANCE

2-10-201. Short title. — This part shall be known and may be cited as the "Registry of Election Finance Act of 1989." [Acts 1989, ch. 585, § 1.]

2-10-202. Legislative intent. — It is the intent of the general assembly to provide adequate financial disclosure by public officials, candidates for public office, and lobbyists. Furthermore, it is the intent of the general assembly to establish a registry of election finance to ensure enforcement of these statutes. [Acts 1989, ch. 585, § 2.]

2-10-203. Registry of election finance — Creation — Appointments — Qualifications — Administration. — (a) There is hereby created as an independent entity of state government a Tennessee registry of election finance. The registry shall be composed of seven (7) members appointed as provided herein. Appointments shall be made to reflect the broadest possible representation of Tennessee citizens. Of the seven (7) members appointed, at least one (1) shall be a female and one (1) shall be black. However, a black female shall not satisfy the requirement of one (1) female and one (1) black. Each member shall have been a legal resident of this state for five (5) years immediately preceding selection. Members shall be at least thirty (30) years of age, registered voters in Tennessee, not announced candidates for public office, not members of a political party's state executive committee, shall not have been convicted of an election offense, and shall be persons of high ethical standards who have an active interest in promoting fair elections. Gubernatorial appointees shall be subject to confirmation by joint resolution of the general assembly. Such appointees shall have full power to serve until any vote of nonconfirmation.

(b)(1) For administrative purposes, the registry shall be attached to the department of state for all administrative matters relating to receipts, dis-

bursements, expense autonomy of the registry, secretary of state shall registry.

(2) No person performing including the executive

(A) Be allowed to public office as determined

(B) Be an officer

(C) Permit his name in opposition to any

(D) Participate in

(E) Lobby, or engage in provision on lobby

performance of his

(c) Members of the

as follows:

(1) The governor shall appointed from a list

committee of the majority list of three (3) nominees

minority party. One

Before making this appointment

at least one (1) organization in fair elections and

replies shall be published such nominations. The

one (1) year;

(2) The senate shall chosen by the members

be chosen by the members shall serve initially

(3) The house of representatives member to be chosen

(1) member to be chosen house appointees shall

(d) Vacancies shall office was originally

(e) The registry shall ship. The chairman

eligible for reelection have all the power:

(f) The registry shall duly recorded in its

present. Special meeting initiative or on the receive seven (7) days

