

Cunningham for Congress

Campaign Headquarters
4917 Evergreen
Bellaire, Texas 77401
Telephone (713) 660-8179
Fax (713) 751-0404

July 18, 1994

VIA TELECOPIER (202) 219-3923

The Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Scott Douglas Cunningham Campaign Committee
FEC # C00287581

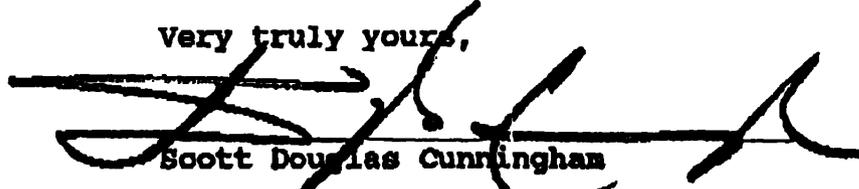
Gentlemen:

In reviewing Chapter 5 of the April 1993 Campaign Guide for Congressional Candidates and Committees published by the Federal Election Committee, a question has arisen in connection with section 1 therein appearing on page 13 with respect to whether or not a candidate can borrow funds from a bank on a signature line of credit.

Years prior to my filing, I entered into a credit agreement with NCNB (now known as NationsBank) which requires me to repay the loan on an installment basis at a fixed rate interest computation. Although the loan is secured by the credit of the candidate, signature lines of credit are not specifically covered in your literature. I request clarification from the commission that borrowing funds on a signature line of credit where there exists an executed loan agreement documenting an obligation to repay on a fixed installment basis with interest, is a method that assures repayment within the contemplation of section 100.7(b)(11)(ii), and hereby request an advisory opinion in that regard. A copy of the credit agreement is enclosed.

In appreciation of your immediate attention, I am

Very truly yours,



Scott Douglas Cunningham

SDC:mc
Enclosures

fee.ltr

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COMMISSION
OFFICE OF GENERAL
COUNSEL

Private Banking Line of Credit

In this Agreement the words "you" and "your" refer to each person, jointly and severally, who has applied for and been granted credit under the terms of this Agreement. The Private Banking Line of Credit Account is referred to as "Line of Credit Account." The words "we", "us" and "our" refer to NCNB Texas National Bank ("NCNB Texas"), Dallas, Texas. If you have signed our Line of Credit Signature Card, our Application for the Line of Credit, or other Account related documents, or if you use the Account, you agree to be bound by the following terms and conditions.

Loans

You can borrow money through your Line of Credit Account subject to this Agreement simply by writing one of the special checks which we will send you. Each check must be for at least \$500. When we pay one of these checks, it will constitute a loan by us to you which must be repaid in accordance with this Agreement. If more than one person has applied jointly for credit, and we have approved the credit on that joint basis, each such person may sign a special check without the signature of any other party to the Account. In the latter event, all parties to the Account are liable, jointly and severally, for the loan created by the party who signed a special check, regardless of whether they specifically authorized the signing of that particular check.

If default occurs, if the Line of Credit is terminated, or if you exceed your Credit Line, we disclaim any liability for dishonoring checks on your Line of Credit Account. You hereby agree to indemnify and hold us harmless from any losses or liability resulting from such dishonor.

Credit Line

You will not write any check on your Line of Credit Account which would make the outstanding principal balance in your Account more than such maximum amount which we may specify from time to time. That specified maximum amount is referred to in this Agreement as your "Credit Line." You agree to repay immediately any amount that exceeds your Credit Line.

You can apply for a change in your Credit Line at any time. You agree to notify the Bank of a material adverse change in your financial condition. At the Bank's option annual or more frequent financial and credit information may be required from you. The information provided may affect the maximum amount of your Credit Line or your credit privileges under this Agreement.

Finance Charge/Annual Percentage Rate

Each quarter during the term of this Agreement, you will pay us a Finance Charge on the average outstanding amount that you have borrowed from your Line of Credit Account. The Finance Charge begins to accrue on the amount borrowed from the date the amount thereof is posted by us to your Line of Credit Account. There is no free period when a new balance may be paid without a Finance Charge.

We will calculate the Finance Charge as follows: We first determine your Average Daily Balance during the billing cycle, which is a quarterly cycle. The Average Daily Balance is equal to the sum of each day's ending balance in the Account during a billing cycle (less any interest included in such balance), divided by the number of days in such billing cycle. Each day's ending balance shall begin with the previous day's ending balance and may include loans posted to the Line of Credit Account on such day, and shall be reduced by credits and payments posted to the Line of Credit Account on such day. We then multiply this Average Daily Balance by a quarterly periodic rate. As of the date of this Agreement, such quarterly periodic rate is 2.25% (which corresponds to an ANNUAL PERCENTAGE RATE of 10.25%). This results in your FINANCE CHARGE for the billing cycle.

The Annual Percentage Rate applicable to your Line of Credit Account is a variable rate based on the Prime Interest Rate of NCNB Texas. The Prime Interest Rate shall mean that named rate charged by NCNB Texas as announced or published by NCNB Texas from time to time, and may not be the lowest interest rate charged by NCNB Texas. This variable rate will be equal to the Prime Interest Rate in effect on the 15th day of the months of March, June, September and December, plus 2.0 percentage points. The Prime Interest Rate will change periodically and will be effective with respect to the Line of Credit Account beginning on the first day of the quarterly billing cycle, commencing in the month of January, April, July and October of each year under this Agreement.

Although the Annual Percentage Rate applicable to your Line of Credit Account will increase or decrease as the Prime Interest Rate changes, such Annual Percentage Rate will never go above the maximum rate applicable to your Account. The maximum rate applicable to your Account is the greater of (a) the maximum rate of interest from time to time permitted under Federal laws applicable to your Account or (b) the "quarterly ceiling" as referred to and defined in Article 5165-1.04(a)(2), Revised Civil Statutes of Texas, as amended from time to time. Such "quarterly ceiling" shall be published in the Texas Register for the 11th day of each March, June, Sep-

tember and December. If the quarterly ceiling as set forth above for any quarter is applicable and is less than the Annual Percentage Rate, the periodic rate and Annual Percentage Rate for the next quarter will be adjusted appropriately to equal the quarterly ceiling.

You agree with us that the intent of this Agreement is to conform strictly with all applicable interest rate ceiling laws and if interest paid or agreed to be paid exceeds the amounts permitted under those laws such excess shall be credited to unpaid advances or refunded to you.

If your balance exceeds \$7,143, so that your Minimum Payment would exceed \$500 (see Payments below for calculation of your Minimum Payment), the effect of such an increase in the Annual Percentage Rate will be an increase in the amount of interest you pay as well as an increase in your scheduled Minimum Payment. If your balance equals or is less than \$7,143, so that your Minimum Payment is \$500, the effect of such an increase should be only an increase in the amount of interest you pay.

NOTICE TO CONSUMER: UNDER TEXAS LAW IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS 24 PERCENT PER YEAR.

Payments

After the close of each quarterly billing cycle, we will send a statement to you which will show the "New Balance" in your Line of Credit Account on the closing date of the billing cycle. The New Balance will consist of the principal amount outstanding in your Account on the closing date, plus the Finance Charge assessed on that date and any other sums which you may then owe under this Agreement. Even if you do not borrow any more after the closing date and pay the entire New Balance, there will still be a Finance Charge calculated from the closing date to the date the payment is posted in your Account. The amount of this Finance Charge will appear on your next quarterly statement and will be due on the date shown. You are not required to pay the entire amount of the New Balance when the You must, however, pay us a quarterly Minimum Payment. The Minimum Payment is calculated as follows:

- If the New Balance on your quarterly statement is \$500 or less, the amount of the Minimum Payment will be the same as the New Balance.
- If the New Balance is more than \$500, your Minimum Payment will be either \$500 or 7% of the New Balance, whichever is more.
- If we accelerate your credit line pursuant to the Acceleration of Payments, your new minimum payment will be the greater of \$1,000, or 1% of

the principal amount outstanding on the date we accelerate your payments, plus the finance charge assessed on the closing date of the billing cycle.

Any delinquent amounts or sums in excess of your Credit Line will be added to the Minimum Payment. Any payments on your Line of Credit Account may be applied first to pay all sums other than principal which you may then owe under this Agreement, and then to reduce the outstanding principal balance in our account. All payments are due on the due date in lawful money of the United States of America, in immediately available funds. You agree not to write a line of Credit check to pay your account.

Default/Collection Costs

If you do not pay the Minimum Payment when you are required, or if you try to borrow more than your Credit Line, or if you fail to perform any of your other obligations to us under this Agreement or otherwise, or if you move permanently outside the State of Texas, or if your financial condition materially or adversely changes, or if you die, or if any bankruptcy, insolvency or similar proceedings are started by or against you, or if we find that you have made any false or misleading statements or omissions in your Line of Credit Account Application, or if for any reason we have a good faith belief that the prospect of payment or performance of your obligations to us under this Agreement is impaired, we can refuse to pay your special checks that are presented to us for payment and we can, subject to any restriction or limitation under any applicable bankruptcy, insolvency or debtor-relief law, declare immediately due and payable the entire outstanding balance in your Line of Credit Account without notice or demand to you or any third party. We may at any time apply or set off deposits or other funds owed by us to you against any indebtedness owing under this Agreement.

Collateral securing other loans with us may also secure the Line of Credit Account. No lien upon real estate given by you to us, regardless of its terms, shall be deemed to secure debt hereunder.

If we try to collect the outstanding balance through any court, you also agree to pay to us all amounts actually incurred by us as court costs and attorney's fees set by a court. You will also be liable for payment to us or any of the following, if actually incurred by us: (i) court costs and attorney's fees for filing, recording, or releasing in any public office any document securing your Account; (ii) the reasonable cost actually expended for researching, storing, preparing for sale or selling any collateral; (iii) fees for noting a lien on or transferring a certificate of title to any motor vehicle securing your Account; and (iv) premiums or other identifiable charges received in connection with permitted sale of insurance.

These rights are in addition to our other rights to demand payment or accelerate performance provided by law and this Agreement.

Billing Rights and Inquiries

If you think your billing statement is incorrect, or if you need more information about a transaction on your statement, write to us on a separate sheet of paper at the address listed below as soon as possible. We must hear from you no later than 60 days after we sent you the first statement on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, provide us with the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item about which you are unsure.

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the statement was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your Credit Line. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your statement that are not in question.

If we find that we made a mistake on your statement, you will not have to pay any finance charges related to any questioned amount. If we did not make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still owe us (or, we must tell anyone to whom we report your account, that you have a question about your statement. And, we must tell you the name of anyone to whom we reported your account. We must tell anyone to whom we report your account, that the matter has been settled between us when it finally is settled.

If we do not follow these rules, we cannot collect the first \$50 of the questioned amount, even if your statement was correct.

Miscellaneous

You promise to pay to our order, at the address specified on each periodic billing statement sent to you, the principal amount of all loans made to you under this Agreement, together with the accrued Finance Charge and all other sums which you may then owe under this Agreement. Crediting of an account may be delayed up to 5 business days if payments are received at an address other than that specified by us.

You agree that we may, at any time assign and transfer your Account and Account Balance. This Agreement and our rights and obligations hereunder to others who will be entitled to our rights under this Agreement. A determination that any provision of this Agreement is unenforceable shall not render any other provision unenforceable.

You agree to notify us promptly of any change in your address by writing to us at the address provided below.

We hope that you will find your Private Banking Line of Credit Account to be an easy, convenient way to borrow money when you need it.

If you lose any of your special checks, please notify us immediately, either by calling or writing to us at the telephone number and address shown below. The stop payment provisions and other terms and conditions of our Deposit Agreement apply to this Account.

If we can assist you with any special arrangements to make the use of your Account more effective, or if there is any other banking or financial service that we might be able to provide, please write or call us at the same address and telephone number.

NCNB Texas

Address _____

City, State, ZIP _____

Telephone Number _____

January 1, 1990

Private Banking Line of Credit Agreement

Member FDIC
Equal Housing Lender
NCNB Texas
06-067-102-01 (9-89)

NCNB
Texas

Amendment

We may unilaterally make changes in this Agreement (including your Credit Line, the Finance Charge Computation method and the Annual Percentage Rate Index or formula) by mailing or delivering to you a written Amendment to the Agreement; at least 90 days before the beginning of the billing cycle in which the changes are to become effective.

In the alternative we may send a "Notice of Amendment" to you, and unless you respond to us before the 31st day after the Notice of Amendment has been mailed to you by indicating your decision not to continue your Line of Credit Account on the enclosed form, you will be deemed to have accepted the change and it will become effective with regard to your Line of Credit Account as of the first billing cycle which begins more than 30 days after the Notice of Amendment is mailed to you. In addition, if you accept or use any extension of credit under your existing Line of Credit Agreement after the expiration of five days from the date the Notice of Amendment is mailed to you, you shall be deemed to have accepted the change, and it will become effective with regard to your Line of Credit Account as of the first billing cycle which begins more than 30 days after the Notice of Amendment is mailed to you. The terms including the rate, or index, formula or provision law used to compute the rate on your Line of Credit Account will be subject to revision as to current and future balances, from time to time, by such notice from us to you. This Agreement and your Account are subject to Chapter 15 of the Texas Credit Code.

Cancellation of Credit Line

Acceleration of Payments

You may cancel your Line of Credit Account at any time by notifying us in writing and paying outstanding amounts owed under this Agreement.

Your Line of Credit Account is subject to review by us every year for renewal. Notwithstanding the above review, we can cancel or temporarily suspend your right to borrow money under this Agreement at any time by written notice to you. If we should do so you will stop borrowing and pay the balance in your Account under the terms of this Agreement.

In certain circumstances, we may terminate your Line of Credit Account and your credit privileges under it, and accelerate the payments so that your next Minimum Payment will be as provided under Payments, above, such circumstances are:

- If you move outside the State of Texas;
- If your financial condition adversely changes; or
- If you fail to provide financial information required by us.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20543

July 20, 1994

Scott Douglas Cunningham
Cunningham for Congress
4917 Evergreen
Bellaire, TX 77401

Dear Mr. Cunningham:

This responds to your letter dated July 18, 1994, with enclosure, which requests an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to bank loans made to you under a bank line of credit agreement.

Your letter indicates that you are a congressional candidate for the 1994 election cycle. You explain that some years ago, prior to your candidate status, you entered into a signature line of credit loan agreement with NCNB Texas National Bank which is now known as NationsBank. This agreement requires you to repay all loan amounts "on an installment basis at a fixed rate interest computation." You request clarification from the Commission that borrowing funds on this line of credit for campaign purposes would satisfy the requirements of Commission regulations governing bank loans. Your letter includes a copy of the credit agreement with NationsBank.

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 request is made." 11 CFR 112.1(c).

After a preliminary review of your letter, this office has determined that additional information is needed before your inquiry may be considered as a complete advisory opinion request. Accordingly, you are requested to answer the following questions.

(1) Give the date when the bank opened the described line of credit loan account.

(2) Give the maximum amount of the line of credit as approved by the bank. State whether that limit has been increased in anticipation of your congressional campaign. If any such increases have been approved, provide an explanation of the circumstances.

(3) Describe and explain any campaign use of the credit line before and after you filed with the Commission as a Federal candidate and give details as to the future draws on the credit line that you propose to make for campaign purposes.

(4) What are the expected sources of funds to make repayments to the bank for any campaign use of the credit line?

(5) Did any other person, such as a spouse, join in the application and/or assume any liability for repayment of loans made pursuant to the credit line? If so, identify that person, state his/her relationship to you, and state whether any guarantees, assets or income of that person were considered and relied upon by the bank in approving the initial credit line or any increases thereof.

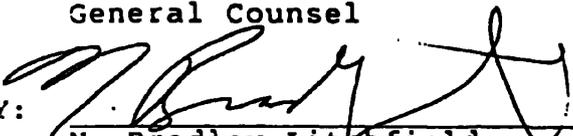
Upon receiving your responses to the foregoing questions, this office and the Commission will give further consideration to your inquiry as an advisory opinion request. If you have any questions about the advisory opinion process or this letter, please contact Mr. Litchfield.

This letter is being sent by fax, given the stated urgency of your inquiry, with a first class mailing to follow. You may reply by fax if desired, but your signed original letter is also needed for record purposes. The fax number for this office is (202) 219-3923.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


N. Bradley Litchfield
Associate General Counsel

Cunningham for Congress

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COMMISSION
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Campaign Headquarters
4917 Evergreen
Bellevue, Texas 77401
Telephone (713) 660-8179
Fax (713) 751-0404

July 21, 1994

VIA TELECOPIER (202) 219-3923

AOR 1994-26

N. Bradley Litchfield
Associate General Counsel
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

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COMMISSION
OFFICE OF GENERAL
COUNSEL

Dear Mr. Litchfield:

Thank you for your July 20, 1994 correspondence.

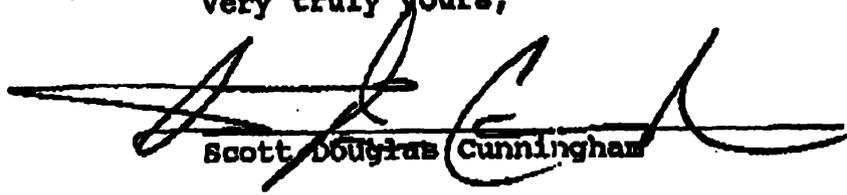
My responses to the specific inquiries contained therein are as follows:

- (1) The original account(s) were opened in 1984;
- (2) The maximum line(s) of credit as approved by the bank total \$50,000.00. The limit has not been increased in anticipation of any congressional campaign, but has remained \$50,000.00 for the past five or six years;
- (3) The line(s) of credit have not been used for any campaign-related expense since my date of filing with the Commission as a federal candidate. I anticipate making draws on said line(s) of credit up to \$50,000.00 to cover expenditures for graphics, printing, advertising, and other campaign-related expenses. I would anticipate making draws on said line(s) of credit during the months of August, September, and October, 1994, in approximately \$5,000.00 increments to cover committed expenses;
- (4) The source of funds for repayment on said revolving line(s) of credit is currently and always has been, personal income derived from my law practice. The line(s) of credit bill on a quarterly basis at three percent (3%) of the outstanding loan balance;
- (5) I am the sole owner of the account(s) and no other person is jointly or severally liable for any portion thereof.

N. Bradley Litchfield
July 21, 1994
Page 2

In appreciation of your professional courtesy and immediate attention to this matter, I am

Very truly yours,



Scott Douglas Cunningham

SDC:mc