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Thomas J. Cooper
(202) 962-4857

March 14, 1995

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

Dear Mr. Litchfield:

This letter is an advisory opinion request filed pursuant to 2 U.S.C. 437f(a). It is filed on behalf of the Hawthorn Group, L.C. of Arlington Virginia ("Hawthorn or the LLC").

Hawthorn is a limited liability company organized under the Virginia Limited Liability Company Act, Va. Code Ann. § 13.1-1000 *et seq.*, ("The Company Act"). (Hereafter, citations to the Company Act will be made with a section designator only.)

The purpose of this opinion request is to confirm our understanding that the LLC would not be deemed to be a corporation for the purposes of the Federal Election Campaign Act ("the Act"). The issue presented by this request, therefore, is whether the prohibitions of 2 U.S.C. 441b (hereafter citations to the Act are with a section designator only) regarding contributions and expenditures apply to the LLC, which intends to make contributions as a "person" as that term is defined in the Act and its implementing regulations ("the Regulations"). The balance of this letter sets forth the basis for our understanding that the LLC is not a corporation within the meaning of §441b.

Limited Liability Companies As Described in the Company Act are Clearly not Corporations for the Purposes of the Federal Election Campaign Act

Significantly, the Company Act defines an LLC as, "an entity that is an *unincorporated association*. without perpetual duration, having two or more managers . . ." § 13.1-1002. The General Assembly, therefore, specifically indicated in the Company Act that LLCs were not corporations. In addition to this categorical statement, there are a number of other provisions in the Company Act which distinguish LLCs from corporations. These provisions are set forth below.

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Corporations generally have an unlimited duration. The Company Act does not provide for a fixed lifetime for LLCs but does require that the articles of organization set out a date after which it is to be dissolved. See § 13.1-1011.4.

Corporations have boards of directors, and shareholders that have only a passive role in the enterprise. Under the Company Act, management of an LLC is directly by the members, although they may agree to have corporate-type management. See § 13.1-1022. Members have "membership interests", which are shares of the profits and liabilities of an LLC and the right to receive distribution of the assets. See § 13.1-1002.

LLCs, unlike corporations, do not have rules concerning the issuance of ownership interests or discrimination within classes of such interests. LLCs generally do not issue certificates equivalent to capital shares, but instead record membership contributions in the articles of organization or other records. Under the Company Act, LLCs are owned by members, and membership interests are personal property. See § 13.1-1038.

In contrast to LLCs, corporate shareholders' shares of future distributions do not necessarily correspond to their contributions. The Company Act allows such allocations to be varied by agreement of the members. See § 13.1-1029.

Corporate stock is freely transferable unless restricted by agreement. In contrast, the Company Act provides that only financial rights are freely transferable. An assignment of such an interest does not entitle the assignee to participate in the management affairs of an LLC, to become a member or to exercise any rights of a member. See § 13.1-1039. An assignee of an interest in an LLC may become a member only if the other members unanimously consent. See § 13.1-1040.

The foregoing provisions clearly distinguish LLCs and corporations in a number of ways that are critical to the organization and functioning of a business association. Together, with the statement in the Company Act that an LLC is not a corporation under Virginia law, these provisions make a compelling case that LLCs and corporations are clearly separate and distinct juridical persons under state law and should be treated accordingly for the purposes of the Act

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The Federal Election Commission's Regulations Provide that State Law Governs With Respect to the Categorization of Professional Associations

We note that the Regulations provide that state law governs with respect to the classification of professional organizations for the purposes of the Act. Specifically, § 11 C.F.R. 114.7(d) (hereafter the Regulations are cited with a section designator only) provides that:

The question of whether a professional organization is a Corporation is determined by the law of the state in which the Professional organization exists.

The Commission should follow the foregoing provision with respect to LLCs.

Virginia Limited Liability Companies Should be Deemed to be an Other Organization or Group of Persons Under the Act

The LLC should be deemed to be an "other organization or group of persons" ("a Person") as the phrase is defined in the Act and the Regulations. As a Person, the LLC should have the contribution limitations set forth in § 110.1 of the Regulations, but § 110.1(e), which addresses contributions by partnerships, should not apply to it. The LLC should not be treated as a partnership for the purposes of the Regulations. It is essential to Hawthorn's intended contribution activity that it learn if §110.1(e) applies to it or not.

As previously noted, § 114.7(d) of the Regulations specifically provides that state law should govern with respect to whether a particular professional association is a corporation or not. The concept underlying this provision, that the Commission should look to state law when determining the categorization of a business association, should be applied with respect to whether the LLC should be regarded as a partnership for the purposes of the Act's limitations.

It is clear under Virginia law that LLCs and partnerships are distinct entities. Virginia law separately provides for LLCs and for partnerships. See Va. Code Ann. § 50-1 et seq. (Hereafter, citations to the Virginia Uniform Partnership Act are with a section designator only.) Under Virginia law, a partnership is:

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an association of two or more persons to carry on as co-owners a business for profit and includes, for the purposes of the law of this Commonwealth, a registered limited liability partnership. See Va. Code Ann. §50-6.

Moreover, the Company Act specifically provides for the conversion of general partnerships formed pursuant to §50-1 et seq. and limited partnerships formed under the auspices of §50-73 et seq., into LLCs. Section 13.1-1010.1 provides that:

- A. A general partnership ... or a limited partnership ... may convert to a limited liability company by filing articles of organization that meet the requirements of §13.1-1011 ...**

Beyond these clear statements in Virginia law, there are other differences between the two types of associations which demonstrate that they are, in fact, different and distinct entities. First, the Members of the LLC do not have personal responsibility for the acts (or liabilities) of the entity solely by reason of their status as members. See §13.1-1019. Partners in a Virginia general partnership are bound by their partner's wrongful acts in the ordinary course of the business of the partnership (see §50-13) and are jointly liable for debts and obligations of the partnership. See §50-15.

LLCs have articles of organization, however, general partnerships do not require a written agreement. See 50-6. (Under Virginia law, limited partnerships execute a certificate of limited partnership, which is required for the formation of this limited type of partnership. See Va. Code Ann. §50-73.11.)

The Internal Revenue Service ("IRS") has issued separate revenue rulings regarding LLCs organized under a number of state laws. A ruling ("the Ruling") has been issued for LLCs organized under the Company Act stating that such entities will be taxed as partnerships. See Rev. Rul. 93-5, 1993-1C.B. 227.

This Ruling has no relevance to the determination of whether the LLC should be deemed to be a partnership for the purposes of the Act's contribution limitations. The Ruling is essentially a determination that LLCs are not corporations for Federal income

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tax purposes. The main issue in the Ruling was whether an LLC should be classified for Federal tax purposes as an "association" (which is taxed as a corporation) or as a partnership. The decision turned on whether the LLC in question had certain characteristics of a corporation. Moreover, the Act and the Regulations separately provide for partnerships and other organizations or groups of persons, and the LLC is not a partnership under applicable state law.

Based on the foregoing, we respectfully request the issuance of an advisory opinion that the LLC is not a corporation for the purposes of the Act or the Regulations; as the term is defined in the Act and Regulations, and is instead a Person, not subject to §110.1(e).

Please call me if you have questions regarding this request.

Thank you for your attention in this matter.

Sincerely,



Thomas J. Cooper

TJC/dd
DC\DOCS5189.01

VENABLE, BAETJER, HOWARD & CIVILETTI, LLP
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VENABLE
ATTORNEYS AT LAW

March 16, 1995

By Hand Delivery

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

AOR 1995-11

Dear Mr. Litchfield:

This letter is a follow-up to our telephone conversation of March 15, 1995.
I have enclosed the following documents regarding the Hawthorn Group ("Hawthorn"):

- The Certificate of Organization;
- The Articles of Organization; and
- An amendment to the Articles.

The precursor to Hawthorn was a sole proprietorship.

Please call me if you have additional questions.

Sincerely,


Thomas J. Cooper

Enclosure

Commonwealth of Virginia



STATE CORPORATION COMMISSION

Richmond, June 2, 1993

This is to Certify that the certificate of organization of

THE HAWTHORN GROUP L.L.C. ID: S-01895

was this day issued and admitted to record in this office and that the said limited liability company is authorized to transact its business subject to all the laws of the State applicable to the company and its business.



State Corporation Commission

William S. Bridg

Clerk of the Commission

THE HAWTHORN GROUP L.L.C.

ARTICLES OF ORGANIZATION

The Hawthorn Group L.L.C., a Virginia Limited Liability Company (the "LLC"), by action of its members, certifies:

1. Name. The name of the LLC is "The Hawthorn Group L.L.C."

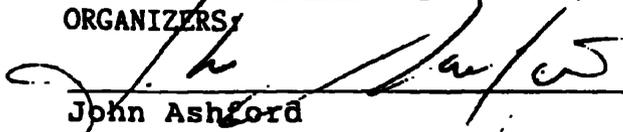
2. Principal Office and Resident Agent. The address of the principal office of the LLC is Suite 100, 211 N. Union Street, Alexandria, VA 22314. The name and address of the resident agent and the registered office of the LLC are Kenneth C. Bass, III, Esq., who is a member of the Virginia State Bar and a resident of Virginia at Suite 400, 2010 Corporate Ridge, McLean, VA 22102, which is located in the County of Fairfax.

3. Operating Agreement. The affairs of the LLC shall be governed by The Hawthorn Group L.L.C. Operating Agreement to be executed immediately upon recording of this Agreement, which may be amended from time to time.

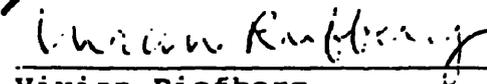
4. Dissolution. The latest date upon which the LLC is to dissolve is December 31, 2033.

IN WITNESS WHEREOF, the undersigned have executed these Articles of Organization on this 1st day of June, 1993.

ORGANIZERS:



John Ashford



Vivian Riefberg



Kate Mattos

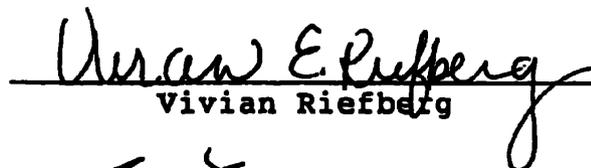
FIRST AMENDMENT TO THE ARTICLES OF ORGANIZATION
OF
THE HAWTHORN GROUP, L.L.C.

In accordance with the provisions of the June 1, 1993 Articles of Organization of The Hawthorn Group, L.L.C., a Virginia limited liability company, Section 2 is amended by the unanimous agreement of the Members to read, in its entirety, as follows:

2. Principal Office and Resident Agent. The address of the principal office of the LLC is Suite 1330, 1300 N. 17th Street, Arlington, Virginia 22314. The name and address of the resident agent and the registered office of the LLC are Kenneth C. Bass, III, Esquire, who is a member of the Virginia State Bar and a resident of Virginia at Suite 400, 2010 Corporate Ridge, McLean, Virginia 22102, which is located in the County of Fairfax.

This Amendment is adopted the 30th day of September, 1993, effective as of August 13, 1993. The undersigned hereby waive any requirement for holding a meeting of the Members and take this action by unanimous written consent.


John Ashford


Vivian Riefberg


Kate Mattos