



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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July 25, 1995

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan Levin
Senior Attorney

SUBJECT: Revised Draft AO 1995-19

At the Open Session of July 20, 1995, the Commission considered Draft Advisory Opinion 1995-19 (Agenda Document #95-74). In that meeting, the Commission voted to direct the the Office of General Counsel to revise the draft in accordance with the Commission's discussion. This Office has made revisions in four areas. These revisions appear in bold on the attached draft and are marked by a vertical line in the right-hand margin. They are on pages 6, 7, 8, and 9.

The revised draft is being circulated on a 72-hour tally basis.

Attachment

DRAFT

ADVISORY OPINION 1995-19

Subodh Chandra, Treasurer
Indian-American Leadership Investment Fund
3939 Rio Grande Blvd. #57
Albuquerque, NM 87107-3153

Dear Mr. Chandra:

This responds to your letter dated May 25, 1995, requesting an advisory opinion on behalf of the Indian-American Leadership Investment Fund ("the Fund") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the disposition of contributions received by the Fund that may be unlawful under the Act.

The Fund is a nonconnected political committee which has been registered with the Commission since August 16, 1993. You state that, on April 27 and 28, 1995, you met with a reporter from the Baltimore Sun who informed you that he had conducted an investigation of contributors to the Fund from the Baltimore area. The reporter indicated that some of these individuals "did not appear to have the financial means" to make contributions in the amount that they gave. The reporter also suggested that some of these contributors had been improperly reimbursed for making contributions. You state that the "specificity and seriousness of the reporter's allegations" led you to notify the Commission by facsimile transmission, sent on April 28, that there may have been violations of the Act. The Commission's Office of General

3 Counsel informed you that your letter will be treated as a
4 sua sponte submission, subject to investigation by the
5 Commission.

6 An article by the reporter containing these allegations
7 appeared in the May 4 issue of the Baltimore Sun. This
8 article referred to the fact that \$34,900 in contributions
9 from the Baltimore area were received by the Fund in one day.
10 It contains specific assertions by some contributors
11 identified in the Fund's reports that they were reimbursed
12 for their donations. The article also contains specific
13 information as to the conduct of the alleged original
14 contributor and other circumstances surrounding some of the
15 donations.

16 All of the contributions to the Fund from contributors
17 in Maryland were transmitted to you by a Baltimore attorney.
18 You assert that, when the contributions were received, you,
19 as treasurer, examined them for evidence of illegality and
20 found that the contributions did not present a question of
21 their legality. The contributions were thus deposited in the
22 Fund's account and drawn upon. You state that, as yet, you
23 "have no information verifying the illegality of any of these
24 contributions" other than what was ultimately reported in the
25 Baltimore Sun. You note that the Federal Bureau of
26 Investigation has asked you for information and documents,
27 which you have provided.

28 In view of Commission regulations addressing refunds by
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3 a political committee of unlawful contributions, you propose
4 two alternative courses of action for the Fund. Under your
5 first proposal, the Fund would mail letters to Maryland
6 contributors describing the proper criteria for
7 contributions, including the invalidity of reimbursed
8 contributions. The letter would also request a signed
9 statement "confirming the legality of contributions made."
10 The second proposal provides that the Fund would obtain the
11 telephone numbers of all the Maryland contributors, contact
12 those contributors by phone, and request their oral
13 confirmation of the legality of the contributions. You, as
14 treasurer, would memorialize these conversations in a written
15 memorandum.

16 You ask whether either or both of the proposed courses
17 of action are required or permitted by Commission
18 regulations. You also ask whether it is "advisable" for the
19 Fund to undertake either course of action. Finally, you ask
20 if there are any additional courses of action that would be
21 required, permitted, or advisable.

22 A contribution by a person who is reimbursed in advance
23 or afterward by another person or entity is unlawful under
24 the Act because it is a "contribution in the name of
25 another." 2 U.S.C. §441f; 11 CFR 110.4(b)(1)(i). It is also
26 unlawful for a committee to knowingly accept such a
27 contribution. 2 U.S.C. §441f; 11 CFR 110.4(b)(1)(iii).

28 Commission regulations prescribe the obligations of a
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committee treasurer upon receipt of a contribution that appears unlawful or presents genuine questions of illegality when received, or upon discovery of the contribution's unlawful nature at a later date.

Contributions that, when received, present genuine questions as to whether they were made by corporations, labor organizations, foreign nationals, or Federal contractors may be either deposited into a campaign depository or returned to the contributor within ten days of the receipt. If such a contribution is deposited, the treasurer must make his or her best efforts to determine the legality of the contribution. The treasurer must make at least one written or oral request for evidence of the legality. Such evidence includes, but is not limited to, a written statement from the contributor explaining why the contribution is legal, or a written statement by the treasurer memorializing an oral communication from the contributor to that effect. If the contribution cannot be determined to be legal, the treasurer must refund it to the contributor within thirty days of its receipt. 11 CFR 103.3(b)(1).

If the treasurer determined at the time the contribution was received and deposited that it did not appear to be from an unlawful source or made in the name of another, but "later discovers that it is illegal based on new evidence not available to the political committee at the time of receipt and deposit," the contribution must be refunded to the

3 contributor within thirty days of the discovery of the
4 illegality. If the committee does not have sufficient funds
5 to refund the contribution at the time the illegality is
6 discovered, it must make the refund from the next funds it
7 receives. 11 CFR 103.3(b)(2).

8 In several opinions, the Commission has reviewed
9 situations involving the requirement to subsequently refund
10 contributions made in the names of others. See Advisory
11 Opinions 1991-39, 1989-5, and 1984-52. In Advisory Opinions
12 1989-5 and 1984-52, the Commission addressed circumstances in
13 which the corporation that actually contributed the funds at
14 issue or its corporate employees (or both) had pled guilty to
15 criminal charges related to the making of the contributions.
16 As stated in Advisory Opinion 1991-39, those two opinions,
17 however, did not limit to guilty pleas the circumstances in
18 which a refund obligation can be said to arise.

19 Advisory Opinion 1991-39 presented a situation in which
20 a political committee received a letter from the Department
21 of Justice indicating that contributions, reported by the
22 committee as received from several persons, had actually been
23 made by one individual who had been indicted by a Federal
24 grand jury. Upon receipt of the DOJ letter, the committee
25 had determined that there was a basis for the appearance of
26 illegality and "segregated" the funds by depositing an amount
27 sufficient to cover the questioned contributions so that the
28 amount would be available if and when the Commission
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determined that a committee disbursement was warranted. The indicted individual asserted his innocence.

Noting that the Federal evidentiary test for a grand jury indictment was whether there was probable cause to believe the accused had committed the crime, the Commission determined that the DOJ letter and the indictment "provided sufficient basis to question the lawfulness" of the contributions under 11 CFR 103.3(b). The Commission concluded that, because the committee could not, under the circumstances, determine the identity of the original contributor, the funds should be disbursed at that time for a lawful purpose unrelated to any Federal campaign, committee, or candidate; to the Federal government, a state or local governmental entity, or a charitable organization qualified under 26 U.S.C. §170(c).

The Commission notes the logical and appropriate application of standards set out in 11 CFR 103.3(b)(1) to situations arising under 11 CFR 103.3(b)(2) where the issue of illegality arises sometime after the receipt of a contribution. Such a situation calls for the taking of ameliorative action where there is a sufficient basis to question the lawfulness of a contribution. In this regard, the Commission does not need to consider whether, by itself, a newspaper article containing general allegations as to contributions in the name of another would provide a sufficient basis to question the lawfulness of a

3 contribution. However, you note the "specificity" of the
4 allegations presented to you in meetings with the reporter.
5 In addition, the May 4 article contains specific information
6 briefly described above as to some of the contributions. The
7 Commission concludes that these circumstances present a
8 sufficient basis for you to question the legality of at least
9 some of the contributions at issue. You must, therefore,
10 take steps that would constitute best efforts to determine
11 the legality of those contributions.

12 Based on information you may have received from the
13 reporter, there may be some contributions (from the Maryland
14 contributors) that may not present a genuine question of
15 legality to you at this time. Nevertheless, the Commission
16 advises exercising best efforts at determining the legality
17 of those contributions as well. In instances where the
18 Commission has investigated and determined that there is
19 culpability on the part of the recipient committee, the
20 Commission often views the expeditious refund or disgorgement
21 of unlawful contributions as a mitigating factor in
22 determining an appropriate civil penalty.

23 Either one of your proposed courses of action would
24 comply with the best efforts requirements set out in 11 CFR
25 103.3(b)(1).^{1/} The amounts of those contributions for which
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27 ^{1/} The Commission assumes that, in connection with your
28 second proposal, i.e., the written memorialization of
29 contributions with the Maryland contributors, the Fund will
30 describe to the contributors the proper criteria for

the identified donors do not provide confirmation of legality should be disbursed for any of the lawful purposes listed in Advisory Opinion 1991-39, and not for a purpose related to any of the Fund's activities. Disbursements should be made in this way because the individual alleged to have reimbursed the contributors denies having done so. See Advisory Opinion 1991-39. The disbursements should be made, from committee funds on hand, within thirty days of this opinion. If the Fund does not have sufficient monies on hand to make the disbursements, it should make the disbursements from the next funds it receives. 11 CFR 103.3(b)(2).

The Fund may have credible information as to a specific contribution indicating that it was made in the name of another, notwithstanding any explanation and assertion of legality by the contributor that might be offered if the committee had made inquiry. In this situation, the Fund should disgorge the contribution amount as described above within thirty days of your receipt of this opinion, or from the next funds it receives.^{2/}

(Footnote 1 continued from previous page)
contributions, as provided for in the first proposal.

^{2/} The Commission notes that the United States Attorney for the Northern District of Maryland has submitted comments with respect to your request. This advisory opinion does not require you to contact any contributors contrary to the express advice of the U.S. Attorney. However, if upon the request of the U.S. Attorney, you decide not to contact contributors, you may not use the amounts of their questionable contributions for any committee expenses, and such amounts must be disgorged as described above. If the

3 This response constitutes an advisory opinion concerning
4 application of the Act, or regulations prescribed by the
5 Commission, to the specific transaction or activity set forth
6 in your request. See 2 U.S.C. §437f.

7 Sincerely,

8
9 Danny L. McDonald
Chairman

10 Enclosures (AOs 1991-39, 1989-5, and 1984-52)

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(Footnote 2 continued from previous page)
29 **Fund does not have sufficient monies on hand, it must make**
30 **the disgorgement from the next funds it receives.**