

Larson for Life for U.S. Senate Committee

P.O. Box 413
Fargo, ND 58107

May 17, 1995

Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington DC 20463

Dear Counsel:

Pursuant to 11 CFR 112.1, I am submitting this request for an advisory opinion. The Larson for Life for U.S. Senate Committee (C000278705), which sponsored the candidacy of Darold Larson for the U.S. Senate in the special election held in North Dakota on December 4, 1992, may shortly be the recipient of monies resulting from settlement of a lawsuit in which the Committee asserted a counterclaim.

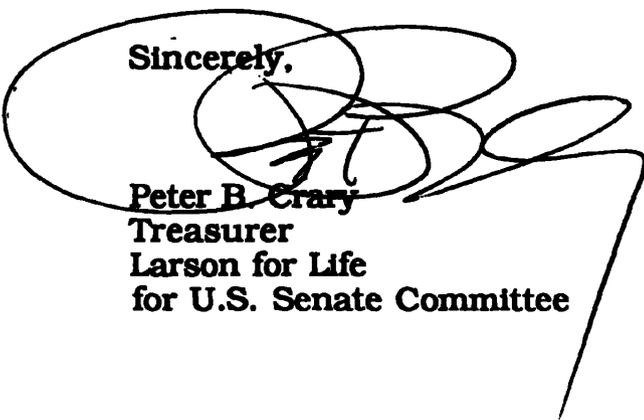
The questions I have to ask are:

- 1/ Is the Committee legally permitted to receive monies resulting from litigation to which it was a party?
- 2/ Is there any limitation on the amount of such funds received?
- 3/ What is the correct way to report such funds?

The conclusion of the lawsuit may require the Committee to maintain confidentiality about the amount received. Can such a requirement be harmonized with the disclosure requirements of the Federal Election Campaign Act and the regulations issued by the Commission?

Thank you for your consideration of this request.

Sincerely,


Peter B. Crary
Treasurer
Larson for Life
for U.S. Senate Committee

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FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

May 24, 1995

**Peter B. Crary, Treasurer
Larson for Life for U.S. Senate Committee
Post Office Box 413
Fargo, ND 58107**

Dear Mr. Crary:

This responds to your letter dated May 17, 1995, which requests an advisory opinion regarding application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the future receipt of funds by the Larson for Life for U.S. Senate Committee ("the Committee").

You indicate that the Committee "sponsored the candidacy of Darold Larson for the U. S. Senate in the special election held in North Dakota" on December 4, 1992. You explain that the Committee may soon receive monies "resulting from settlement of a lawsuit in which the Committee asserted a counterclaim." You ask whether such funds may be accepted by the Committee and whether the Act imposes any limit on the amount received. You also seek advice as to the correct way to report these funds and inquire whether the Act would allow the amount of such funds to remain confidential, assuming that is required as part of the litigation settlement.

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 provide that 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). The regulations also explain that such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to this the request is made." 11 CFR 112.1(c). 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).

Letter to Crary
Page 2

In view of the cited requirements, you will need to provide additional facts that will present a complete description of the relevant facts and clarify the legal issues presented by your inquiry. Please respond to the following questions:

1) This office assumes that the Committee proposes to expend the described funds for some campaign purpose, such as the retirement of outstanding Committee debts and obligations from the 1992 campaign. State whether that assumption is correct and explain any other proposed uses of the funds.

2) Describe the factual background and circumstances of the underlying litigation. Your response should identify all parties to the litigation and summarize the basic allegations of fact and the legal issues, as set forth in both the complaint and the Committee's counterclaim.

3) Explain the factors which could result in a settlement that may require the amount of the payment to remain confidential. We assume the settlement would allow identification of each person who makes any payment to the Committee in connection with the matter. Is that correct? Please explain.

For your information, the Act and Commission regulations do recognize that political committees may, under certain circumstances, receive funds that are "other receipts" and not contributions from the payor. Examples of such committee receipts would be interest paid by a bank on committee balances in depository accounts, which earn interest in the ordinary course of business, or refunds of deposits initially made to utility companies (or other committee vendors) to assure that the committee will pay monthly service bills issued by the vendor. These committee receipts are not subject to the contribution limits of 2 U.S.C. §441a, nor are they prohibited corporate contributions under 2 U.S.C. §441b. In all such cases, however, the amount and date of these receipts, as well as the identification of the payor (if the total amount paid exceeds \$200 for the calendar year), must be itemized. 2 U.S.C. §434(b)(3)(G), 11 CFR 104.3(a)(4)(vi). If the Committee proposes to avoid disclosure of any receipt in excess of \$200 from any single payor, it may do so only to the extent the Commission grants an exemption for good cause in an advisory opinion. See Advisory Opinion 1990-13, copy enclosed.

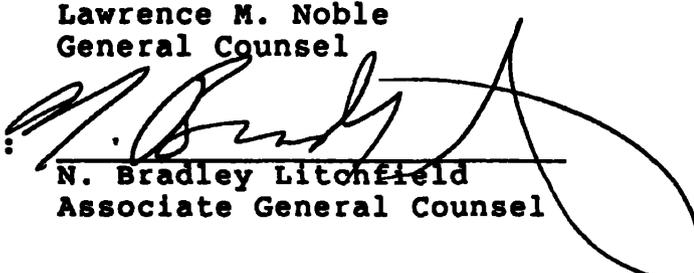
Letter to Crary
Page 3

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

Sincerely,

Lawrence M. Noble
General Counsel

BY:



N. Bradley Litchfield
Associate General Counsel

Enclosure

**Larson for Life for U.S. Senate
Committee**

**P.O. Box 413
Fargo, ND 58107**

May 30, 1995

N. Bradley Litchfield
Associate General Counsel
Federal Election Commission
Washington, DC 20463

AOR 1995-21

Dear Mr. Litchfield:

Thank you for your letter of 24 May responding to my request for an advisory opinion about the receipt of funds from settlement of a lawsuit. I will seek to answer each of your questions in turn.

1) This office assumes that the Committee proposes to expend the described funds for some campaign purpose, such as the retirement of outstanding Committee debts and obligations from the 1992 campaign. State whether that assumption is correct and explain any other proposed uses of the funds.

The Committee has no outstanding debts and no plans as of this moment for expenditure of any funds received, but would appreciate guidance from the Commission as to what would be permissible uses of these funds.

2) Describe the factual background and circumstances of the underlying litigation. Your response should identify all parties to the litigation and summarize the basic allegations of fact and the legal issues, as set forth in both the complaint and the Committee's counterclaim.

The Fargo Women's Health Organization, Inc., an incorporated abortion clinic, obtained a judgment against Darold Larson, the Committee's senatorial candidate, in 1988. This occurred prior to the formation of the Committee. The abortion clinic during the campaign attempted to collect on the judgment by garnishing the Committee's campaign depository which was established under 2 USC 432(h). The bank where the Larson Committee had its campaign depository honored the garnishment and froze the Committee's depository for a week. The funds were then released.

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N. Bradley Litchfield
May 30, 1995
Page Two

The abortion clinic then sent the Sheriff of Cass County under a levy of execution to seize the Committee's broadcast videotapes from local TV stations. The Sheriff complied. After the campaign ended the Committee brought an action to recover its property from the Sheriff who was planning an auction sale of the videotapes. The Sheriff responded by filing an interpleader action naming the abortion clinic, the Committee and the candidate as defendants. The Committee counterclaimed for damages against the Sheriff for the harm done to the campaign by the levy on the videotapes. A North Dakota District Judge on May 28, 1993 found that the videotapes belonged to the Committee and were not subject to levy to pay the candidate's personal debts. He ordered them returned to the Committee. On the same grounds he dismissed the abortion clinic's parallel action for a supplemental complaint against the depository bank. No action was taken on the counterclaim apart from discovery until early this year when the Committee filed a Note of Issue and Certificate of Readiness. In mid-March a settlement was reached with the Sheriff of Cass County on the counterclaim and a related lawsuit that did not involve the Committee. Both lawsuits were settled for an aggregate amount of \$2500. See Attachment A. \$1000 of this settlement will go to the Women's Care Clinic, Inc. The remaining \$1500 is for the campaign committee.

3) Explain the factors which could result in a settlement that may require the amount of the payment to remain confidential. We assume the settlement would allow identification of each person who makes any payment to the Committee in connection with the matter. Is that correct? Please explain.

The Sheriff has made no demand on the Committee that it keep the amount of the settlement confidential. At the time of my May 17th letter, this was still an open question. I see no reason why the Committee cannot fully report the amount and source of the settlement funds.

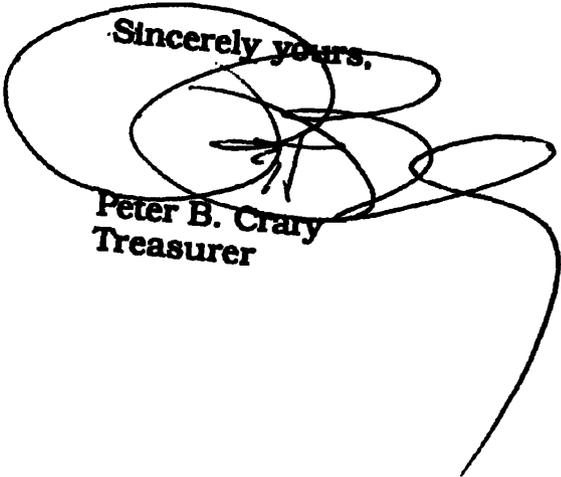
Additional request for guidance:

If the Committee is permitted to receive the amount of \$1500 as payment from the Sheriff of Cass County in settlement of the Committee's counterclaim for harm done to the Committee by the levy on the videotapes, may the Committee pay a reasonable percentage of these funds to the lawyer who has represented it and who negotiated the settlement?

If I may be of further help in clarifying any of the circumstances related to this request for an advisory opinion, please do not hesitate to ask for additional information. It is my wish as Treasurer of the Larson Committee fully to comply with applicable federal election law and regulations.

N. Bradley Litchfield
May 30, 1995
Page Three

Sincerely yours,



Peter B. Crary
Treasurer



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BRADLEY W. BERG, OF COUNSEL

PEGGY J. BUCHHOLZ, PLS
Administrative Assistant

May 16, 1995

Mr. Richard D. Varriano
Attorney at Law
200 South Fifth Street, #106
Moorhead, MN 56560

Re: Sheriff of Cass County, et al. v. Larson for Life for U.S.
Senate, et al.
District Court Civ. No. 92-2427
Our File No. 93-853

Re: Women's Care Clinic, Inc. v. Cass County Sheriff, et al.
District Court Civ. No. 94-3286
Our File No. 94-1332

Dear Mr. Varriano:

I write to confirm our agreement, both of the above-referenced lawsuits will be dismissed as against the Sheriff of Cass County, his agents and employees, in return for the total sum of \$2,500. I have requested the settlement draft in that amount and asked that it be made payable to "Varriano Law Office Trust Account." I assume you will be making the appropriate distribution to the various plaintiffs in accordance with their respective interests. If that is not acceptable, please advise at once.

I also enclose for each of the above lawsuits the following documents:

1. Stipulation for Dismissal;
2. Order for Dismissal; and
3. Judgment of Dismissal.

Each of the Stipulation documents is an original for signature by all counsel. The other documents are simply copies of the original which I have retained. If these documents are acceptable to you, I would appreciate your execution of the Stipulation and forwarding of that original Stipulation on to Mr. Kirschner with regard to the

REPLY TO:

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Mr. Richard D. Varriano
May 16, 1995
Page 2

first case listed above, and to Mr. Carlson with regard to the second case referenced above. By copy of this letter, and copies of the enclosed documents with regard to their respective cases, I am asking that Mr. Carlson and Mr. Kirschner also execute the original Stipulation and return it to me for filing.

I also enclose an original Release of All Claims document encompassing all of your clients with regard to both of the above-referenced lawsuits. If you would kindly obtain the necessary signatures and return this original document to my office, I will withhold filing any of the dismissal documents, and will hold the original Release document, until I have received and forwarded to you the settlement draft. Naturally, if any questions should arise, please feel free to contact me.

Best personal regards.

Very truly yours,

OHNSTAD TWICHELL, P.C.



Robert G. Hoy

RGH:dms
Enc.

cc/enc.: Mr. William Kirschner
Mr. Bruce H. Carlson
Mr. Jeff MacQueen