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August 23, 1995

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AOR 1995-31

RECEIVED  
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OFFICE OF GENERAL  
COUNSEL

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Re: Advisory Opinion Request

Dear Mr. Litchfield:

We are counsel to the San Diego Host Committee ("SDHC") and on its behalf, we are requesting a formal advisory opinion from the Commission as to the ability of organizations affiliated with national banks as well as state banks to contribute to SDHC under Commission regulations (11 C.F.R. § 9008.52).

We are submitting this request together with a request of Chicago's Committee for '96 because SDHC and Chicago's Committee for '96 have similar interests in the resolution of these issues.

SDHC is a nonprofit mutual benefit corporation organized under California's Nonprofit Corporation law. SDHC is exempt from federal income taxes under Section 501(c)(6) of the Internal Revenue Code, and from state income tax under provisions of the California Revenue and Taxation Code. SDHC is also a registered host committee. The following organizations have indicated that they wish to make cash or in-kind contributions, such as office space, to SDHC:

1. A bank chartered pursuant to California law;
2. A corporation which is a holding company of a national bank, a state bank and other non-banking organizations; and
3. A mortgage company or other corporation which is a wholly-owned subsidiary of a national bank.

All of the above-described organizations have branch offices in San Diego County and, therefore, qualify as local businesses as that term is defined under 11 C.F.R. § 9008.52(c).

I. HOLDING COMPANIES AND NON-BANK AFFILIATES OF BANKS.

We seek your concurrence in our opinion that the holding company of the national bank and the non-banking subsidiary of a national bank may contribute to SDHC in the same manner as any other local business, because neither the holding company nor the subsidiary of the national bank are "banks." Moreover, the Commission has determined that a bank holding company may make contributions in connection with state and local elections, provided that no funds derived from the national bank are used to fund those contributions. See FEC Advisory Opinion 1981-61, Fed. Election Camp. Fin. Guide (CCH) ¶ 5641. This opinion indicates that the restriction on national banks (2 U.S.C. § 441b) does not apply to affiliates (including parents or subsidiaries) of such banks which do not themselves qualify as national banks.

II. STATE BANKS.

Section 9008.52(c) of the Commission's regulations specifically provide that local businesses "(excluding banks)" may contribute to SDHC. Since section 441b specifically prohibits contributions by national banks and other federally chartered corporations in connection with federal, state and local elections, and the Commission's regulations and Advisory Opinions have treated contributions by national banks and other corporations organized under federal law in a manner different from contributions by state banks and other corporations (see, e.g. 11 C.F.R. § 114.2), we seek the Commission's concurrence with our opinion that it is reasonable to interpret the exclusion for banks in section 9008.52 as applicable to national banks only.

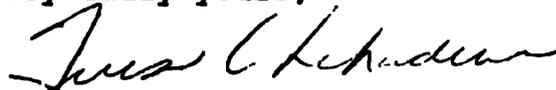
We believe that the "bank exclusion" should be interpreted narrowly because any policy for such an exclusion is no longer persuasive given the changes to the financial services industry. For example, myriad financial service companies today provide "traditional banking services," such as checking accounts, while banks themselves are now providing services which they were not providing when the Federal Election Campaign Act was adopted. Thus, this distinction between local organizations which qualify as "banks" and those which do not may no longer serve its intended purpose. Finally, the local character of banks is indistinguishable from that of other local businesses or entities; all local businesses have an interest in promoting the

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City of San Diego and to ensure its continued economic viability.

We look forward to your prompt consideration of these issues. Should you have any questions or comments about this request, please do not hesitate to contact me.

Very truly yours,



Teresa C. Lahaderne

cc: Mr. Gerald L. Parsky

Mr. F. K. Lowell  
Mr. P. C. Shea