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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

SEP 14 4 23 PM '95

September 14, 1995

MEMORANDUM

**AGENDA ITEM**  
**For Meeting of: SEP 21 1995**

TO: The Commission

THROUGH: John C. Surina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Rosemary C. Smith  
Senior Attorney

SUBJECT: Draft AO 1995-31

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for September 21, 1995.

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3 ADVISORY OPINION 1995-31

4 Teresa C. Lahaderne, Esquire  
5 Pillsbury, Madison & Sutro  
6 Post Office Box 7880  
7 San Francisco, CA 94120-7880

**DRAFT**

8 Dear Ms. Lahaderne:

9 This responds to your letter dated August 23, 1995,  
10 requesting an advisory opinion on behalf of the San Diego  
11 Host Committee ("the Committee"), a host committee for the  
12 1996 Republican presidential nominating convention. Your  
13 request concerns the application of the Federal Election  
14 Campaign Act of 1971, as amended ("the Act") and the  
15 Presidential Election Campaign Fund Act ("the Fund Act"), and  
16 Commission regulations to the Committee's acceptance of  
17 monetary and in-kind donations from state banks, and  
18 companies and corporations related to banks.

19 You ask whether the Committee may accept "cash or  
20 in-kind contributions, such as office space" from the  
21 following companies: 1) "a bank chartered pursuant to  
22 California law;" 2) "a holding company of a national bank, a  
23 state bank and other non-banking organizations" and 3) "a  
24 mortgage company or other corporation which is a wholly-owned  
25 subsidiary of a national bank." You do not state whether the  
26 holding company or the subsidiary would use funds derived  
27 from a national bank to fund its donations. Each of these  
28 entities has branch offices located in San Diego County.

29 The Act prohibits national banks and federally chartered  
30 corporations from making contributions or expenditures in  
connection with elections to any political office. 2 U.S.C.  
§441b(a). It also prohibits corporations from making

contributions or expenditures in connection with any Federal election. However, there are several exceptions to these prohibitions. For example, Commission regulations at 11 CFR 9008.52(c) recognize that local businesses, including local corporations, and other local organizations may donate funds or make in-kind donations to host committees for certain limited purposes involving promotion of the convention city and providing convention-related facilities and services. These include welcoming convention attendees, providing the use of an auditorium or convention center, providing transportation, law enforcement, or similar convention-related facilities and services.

Local businesses are those located within the Metropolitan Area of the convention city, and those that have a branch office located in the Metropolitan Area of the convention city. 11 CFR 9008.52(c)(2). See 55 Fed. Reg. 12154 (March 30, 1990) for a description of metropolitan areas. You indicate that each of the prospective donors has branch offices located in San Diego County. The Metropolitan Area of San Diego includes San Diego County. Hence, these companies would be considered local.

Banks, however, are excluded from the exception set forth in 11 CFR 9008.52(c).<sup>1</sup> The 1979 Explanation and

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<sup>1</sup> The term "bank" is not defined in the convention regulations in 11 CFR Part 9008. However, mortgage companies would presumably not themselves be banks, unless they qualify as state banks, federally chartered depository institutions or depository institutions the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation. See 2 U.S.C. §431(8)(B)(vii).

Justification of a related provision regarding discounts given to convention committees notes that section 441b of the Act prohibits banks from making contributions or expenditures in connection with Federal elections. See Explanation and Justification, 44 Fed. Reg. 63037 (Nov. 1, 1979). It indicates that the "restrictions concerning who may donate funds to defray convention expenses ... are necessary to insure that such donations are commercially, rather than politically motivated." Id. at p. 63038.

In Advisory Opinions 1981-61, 1981-49 and 1980-7, the Commission permitted a holding company of a national bank, a holding company of a federally chartered savings and loan association, and a wholly owned subsidiary of a federally chartered savings and loan association, respectively, to make contributions in connection with state and local elections, provided that the funds used to make the contributions did not result from the operation of the federally-chartered entities. However, the Commission did not allow contributions to be made or used, directly or indirectly, in connection with any Federal election.

With respect to the holding company and subsidiary company you describe, the situation is similar, provided that bank funds would not be used in connection with a Federal election. Although the Presidential national nominating convention is an election under 2 U.S.C. §431(1)(B), the funds would be used to promote the city of San Diego, and to provide certain facilities and services. Accordingly, the Commission concludes that the Committee may accept the monetary and in-kind donations from the holding company and

subsidiary corporation described in your request provided that the funds donated by these entities are not derived from banks. This conclusion is predicated upon the presumption that the parent and subsidiary companies you describe are distinct legal entities, and not merely the agents, instrumentalities or alter egos of their associated state or federal banks. See Advisory Opinion 1980-7.

However, the Committee may not accept donations, whether monetary or in-kind, from the bank chartered pursuant to California law. The term "bank" as it is used in 11 CFR 9008.52 is not limited to "federally chartered" or "national" banks.

The Committee's acceptance of monetary and in-kind donations triggers an obligation to comply with the recordkeeping and reporting requirements of the Act, 2 U.S.C. §437 and 11 CFR 9008.51(b). Note that the value of an in-kind donation is the price of the goods or services in the market from which they ordinarily would have been purchased at the time of the donation. Cf. 11 CFR 100.7(a)(1)(iii) (value of in-kind contributions determined by usual and normal charge). The documentation required under 2 U.S.C. §432(c) and regulation sections 102.9 and 104.14 must be preserved and available for audit, inspection or examination by the Commission for at least three years after the filing of the report to which the documentation relates. See 2 U.S.C. §432(d) and 11 CFR 102.9(c) and 104.14(b)(3).

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

Sincerely,

Danny L. McDonald  
Chairman

Enclosures (AOs 1981-61, 1981-49 and 1980-7)