



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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January 3, 1995

AGENDA ITEM

For Meeting of: JAN 10 1996

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael G. Marinelli
Staff Attorney

SUBJECT: Draft AO 1995-40

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for January 10, 1996.

Attachment

1 **ADVISORY OPINION 1995-40**

2
3 **Barbara E. Wixon**
4 **Williams & Jensen**
5 **1155 21st Street N.W.**
6 **Washington, D.C. 20036-3308**

DRAFT

7
8 **Dear Ms. Wixon:**
9

10 **This responds to your letters dated October 17, November 7, and November 30,**
11 **1995, requesting an advisory opinion on behalf of Continental Airlines ("Continental")**
12 **concerning the application of the Federal Election Campaign Act of 1971, as amended**
13 **("the Act"), and Commission regulations to the proposed disaffiliation of two separate**
14 **segregated funds.**

15 **In a previous advisory opinion, the Commission reviewed the relationship between**
16 **Continental and Eastern Airlines ("Eastern"). Advisory Opinion 1990-10. At the time that**
17 **opinion was issued, Continental (then known as Texas Air) owned 100% of the stock of**
18 **Eastern Air. Both Eastern and Continental each operated their own separate segregated**
19 **funds: Continental Holdings Political Action Committee ("Continental PAC") and Eastern**
20 **Airlines PAC ("Eastern PAC"). Eastern was undergoing bankruptcy proceedings and**
21 **control and management of Eastern had been taken from Continental and placed in the**
22 **hands of an independent trustee. Because of this circumstance, Continental requested that**
23 **the Commission find that Eastern PAC and Continental PAC were no longer affiliated.**
24 **However, the Commission, citing the continued sole ownership of Eastern Stock by**
25 **Continental, concluded that the two separate segregated funds were affiliated.**

26 **Continental believes that changed circumstances now warrant a different**
27 **conclusion; namely, that Continental PAC and Eastern PAC are no longer affiliated**
28 **committees. You include as new information, a copy of an Order of Abandonment of**
29 **Estate Property issued by the United States Bankruptcy Court for the Federal District of**
30 **Delaware. The order, which identifies Continental as a "debtor in possession," states that**

1 as of December 26, 1991, all debtors "shall not be deemed to hold or own any stock or
2 equity in Eastern Air Lines, Inc., nominally, beneficially or otherwise."¹

3 You also represent that there are no common directors, officers or administrative
4 personnel between the two entities.² Furthermore, there have been no infusions of capital
5 or cash by Continental into Eastern, and Continental has not guaranteed any of Eastern's
6 pension retirement programs or any other Eastern obligation.³

7 With respect to the SSFs themselves, you assert that there has been no transfer of
8 funds between the two committees and that Continental has no involvement in the
9 operations of Eastern PAC.⁴

10 The Act and Commission regulations provide that committees, including separate
11 segregated funds, that are established, financed, maintained or controlled by the same
12 corporation, person, or group of persons, including any parent, subsidiary, branch, division,
13 department, or local unit thereof, are affiliated. Contributions made to or by such
14 committees shall be considered to have been made to or by a single committee. 2 U.S.C.
15 §441a(a)(5); 11 CFR 100.5(g)(2), 110.3(a)(1), and 110.3(a)(1)(ii).

16 Where one entity is not a subsidiary of another entity, as in 11 CFR 110.3(a)(2)(i),
17 Commission regulations provide for an examination of various factors in the context of an
18 overall relationship to determine whether one company is an affiliate of another and,
19 hence, whether their respective SSFs are affiliated with each other. 11 CFR 100.5(g)(4)(i)
20 and (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J). These factors include: (A) the ownership

¹ In a December 12, 1995, phone conversation with Commission staff, you explained that ownership of such stock was transferred to the Court-appointed trustee of Eastern.

² You explain that Eastern Airlines continues its existence through the person of the bankruptcy trustee. You also state that there are no members currently serving on the Board of Continental who also served as directors during the time the two airlines were affiliated.

³ You explain that The Pension Benefit Guaranty Corporation, which is the guarantor of certain of Eastern's pension program obligations, asserted a claim against Continental that was settled as part of Continental's plan of reorganization in bankruptcy. You affirm that all other such claims were similarly resolved as part of Continental's plan of reorganization and Continental is not now liable for and has not guaranteed any subsequent obligations of Eastern.

⁴ In your request, you point out that Eastern PAC is administered by the law firm of Verner, Liipfert, which has no relationship with either Continental or its separated segregated fund.

1 by one sponsoring organization of a controlling interest in the voting stock or securities of
2 another sponsoring organization; (B) the authority or ability of one sponsoring organization
3 to participate in the governance of another sponsoring organization through provisions of
4 constitutions, by-laws, contracts or other rules, or through formal or informal practices or
5 procedures; (C) the authority or ability to hire, demote or otherwise control the decision
6 makers of another sponsoring organization; (E) common or overlapping officers or
7 employees, indicating a formal or ongoing relationship between the sponsoring
8 organizations; (F) members, officers, or employees of one sponsoring organization who
9 were members, officers, or employees of another organization which indicates a formal or
10 ongoing relationship or the creation of a successor entity; and (I) an active or significant
11 role by one sponsoring organization in the formation of another. 11 CFR
12 110.3(a)(3)(ii)(A), (B), (C), (E), (F), and (I).

13 The Commission notes that the basis of the previous opinion was the per se
14 affiliation of the committees resulting from Continental's continued ownership of Eastern.
15 The facts as presented today indicate that the ownership relationship has been severed.
16 The Commission notes the specific and unusual circumstances of this opinion. The
17 severance of the relationship between the parent and the subsidiary was accomplished not
18 through a typical business re-organization, but through a lengthy bankruptcy proceeding
19 culminating in a judicial order ending the parent corporation's legal ownership of stock in
20 its former subsidiary. See, by comparison, Advisory Opinion 1995-36.

21 Your representations also indicate the absence of factors which, if present, would
22 show a continuing connection between Eastern and Continental. The Commission
23 therefore concludes in these special circumstances that Eastern Airlines is disaffiliated
24 from Continental Airlines. Thus, Continental PAC and Eastern Airlines PAC are no longer
25 affiliated committees.

