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February 20, 1996

Mr. N. Bradley Litchfield
Associate General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Supplement To
AOR 1996-01

RECEIVED
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COMMISSION
OFFICE OF GENERAL
COUNSEL

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Re: AOR 1996-1

Dear Mr. Litchfield:

Thank you for your letter dated February 13, 1996 requesting additional information for the Commission's consideration of our Advisory Opinion request dated January 16, 1996 presented on behalf of the Association of Trial Lawyers of America ("ATLA"). By this letter I am attempting to respond to your request for additional information. You request additional facts concerning the ninth of ten questions posed to you in our original request. That question posed:

In some cases, a candidate's designated campaign representative, such as a state or regional finance chairman, might also be a member of ATLA. If that person is so expressly authorized by the candidate, and holds such a significant position in the candidate's campaign, and if the campaign so requests, is there any reason why the candidate may not designate that person's personal address as the appropriate address to which members would be advised to send their campaign contributions? This inquiry assumes that the authorized representative volunteers or works in a compensated role for the campaign and is not acting on behalf of the organization.

As you can no doubt appreciate, ATLA has been very careful not to undertake any specific actions which it believes may not be unequivocally permitted under existing law and FEC precedent without first receiving a reply to its Advisory Opinion request. Therefore, it is difficult for me to give you a precise factual situation presented by our question. Nevertheless, let me here try to elaborate more precisely on how I think this question is relevant.

We wish to confirm that if ATLA as a membership organization is permitted to urge its members to send contributions directly to federal candidates, then the precise recipient or addressee for such contributions may be any appropriate official appointed and/or recognized by a particular campaign, so long as the campaign agrees and all relevant laws are obeyed. The

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genesis of the question was our experience that many ATLA members are engaged in fund-raising activities on behalf of federal candidates. ATLA wishes to confirm then that if a campaign representative lawfully in a position to fundraise for a candidate is also a member of ATLA, that that person's address could be included as part of ATLA's partisan communications with its members.¹¹

To reiterate as to the overall program, the idea to use ATLA's partisan communications rights in this manner was wholly that of ATLA leadership. Under the endorsement program, ATLA leadership will internally develop a list of candidates it believes worthy of support and endorsement. While there may be some coordination with candidates prior to the point they are endorsed, such as to determine their position on certain issues, this endorsement process will be an internal ATLA undertaking. Further, the placing of a candidate on the "endorsed list" will not be part of any "coordinated" effort in support of a candidate undertaken with any other group, association, party committee or otherwise. Certainly such candidates may also be recipients of ATLAPAC contributions, and ATLA or ATLAPAC may at times and within legal limits undertake other political activity, such as supporting coordinated campaigns.¹² Such activities, however, have been and will be undertaken without regard to and separate from any candidate endorsement operation.

As to the issue of the specific addressee, we anticipate several possibilities. In many cases, it is likely that the address included will simply be the candidate's campaign headquarters. In other cases, it may be, as discussed in specific examples below, that an ATLA member is a designated fundraising official (*see* footnote 1) for a candidate prior to that candidate ever being put on ATLA's endorsed list. In that case, ATLA might want to identify that individual and ask the campaign if that person can be the designated addressee. Or, if after a candidate is endorsed the campaign designates an ATLA member for such a position, ATLA again might want to use that person as the addressee. Obviously, ATLA would use whatever address a particular campaign preferred, and that address, one would assume, might vary among a designated representative, an in-state campaign headquarters, a Washington, D.C.-based campaign headquarters, or a retained professional fund-raising firm's address. In no circumstance would any addressee be using ATLA resources or otherwise acting on behalf of ATLA. As discussed in our original request, we understand that ATLA itself may not serve as a conduit. We now share a few specific examples:

¹¹ We assume that the person in question would otherwise be permitted under FEC rules to collect and forward contributions (*i.e.*, that person is meeting the requirements of 11 C.F.R. §110.6(b)(2)(i)(E) or is filing a conduit report). While we understand that the Commission has never precisely interpreted these regulations, we assume that a given person would be expressly authorized in writing by the campaign to collect contributions for the campaign, and would be bestowed with a specific position in the campaign, such as "Deputy Finance Chair".

¹² ATLAPAC is governed by a separate Board of Trustees different from the ATLA Executive Committee.

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In the last election cycle, the campaign Finance Chairman for a Republican Congressman was a member of ATLA, although he was not a member of or active in ATLA's leadership in any way. We do not believe that he was compensated in any way for his role in the campaign, but he was clearly authorized by the candidate to raise funds and he clearly occupied a significant position in the candidate's campaign. If this person again assumed that role for the campaign, ATLA would want to be able to include that person's address as the appropriate address to which contributions should be sent.

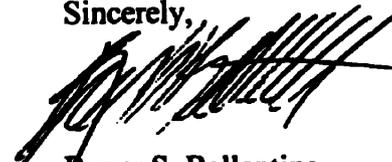
Similarly, a Democratic Senator's general campaign chairman is a member of ATLA. This person is not a member of or active in ATLA leadership, and presumably is not a full time or even paid staff member of the candidate's campaign. ATLA might want to include that person's name and address as an appropriate recipient of campaign contributions.

In another situation, a trial lawyer who is an ATLA member and a member of the ATLA leadership was asked by a Republican Senator to be a finance Vice-Chairman of his campaign. That person's address again might be the one ATLA might wish to include in its communications.²

ATLA will certainly conform its program to meet all applicable requirements, and thus would welcome your explanation as to these boundaries so as to allow us to design our program accordingly. We very much appreciate the Commission's consideration of our request and apologize for the necessarily hypothetical nature of some of our questions. I would be more than happy to respond to any additional questions, although we are quite eager to hear the Commission's response and move forward with our program.

Thank you very much for your consideration.

Sincerely,



Roger S. Ballentine

² ATLA would welcome the Commission's guidance on whether it makes a difference if such a person is a member of the ATLA leadership, such as the Executive Committee (which contains about a dozen members) or the ATLA Board of Governors (which contains over one hundred trial lawyers). In some of the situations we have experienced in the past, the ATLA members who were involved in particular candidate's campaigns were very often simply among the over 50,000 members of ATLA and not in any way tied to ATLA leadership.