

THE BREEDEN-SCHMIDT FOUNDATION

ESTABLISHED TO ADVANCE THE PRINCIPLES OF SOCIALISM

C/O IRWIN GOSTIN
Post Office Box 711718
San Diego, California 92171-1718

Trustees:
Milton Lessner,
Chairman

Robert Manewitz

Aurora Torres

Carl Wood

Irwin Gostin
Secretary-Treasurer

December 9, 1995

Federal Election Commission
999 E Street, NW
Washington, DC 20463

Gentlemen:

I would like to formally request an advisory opinion as to whether or not the Breeden-Schmidt Foundation is considered a non-connected political action committee, and if so, to obtain the needed information as to what legal requirements there are for us to make political contributions.

The Breeden-Schmidt Foundation was established in order to receive the funds from a testamentary distribution of Wilbur Breeden who left the funds to a friend in trust to be used for the purposes of advancing the principles of socialism or to create a foundation to advance the principles of socialism. This foundation was then formed in order to receive those funds and it did so. Since formation, the foundation has not solicited nor received funds from any other source other than income on investments from the original charitable contribution from the estate of Mr. Breeden.

From time to time, distributions are made from fund assets for various purposes which the Board of Trustees deem to be in accordance with the principles of the fund's creation. We would like also to make political contributions to candidates for state, federal or local office and it has been brought to our attention that in order to do so we might be considered a political action committee and therefore have to meet certain requirements of such a committee and this letter is to enquire as to whether or not, under the facts presented in this letter, we

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COUNSEL

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are indeed considered a political action committee, and, if so, to ascertain what requirements we must meet in order to be able to make donations to candidates for federal office.

We would appreciate your response at the earliest possible time.

Very truly yours,



Irwin Gostin

IG/tg



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 22, 1995

Irwin Gostin
The Breeden-Schmidt Foundation
PO Box 711718
San Diego, California 92171-1718

Dear Mr. Gostin:

This refers to your letter dated December 9, 1995, which requests advice concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the possible status of The Breeden-Schmidt Foundation ("the Foundation") as a political committee.

You state that the Foundation was established in order to receive a testamentary distribution from Wilbur Breeden. Mr. Breeden left the funds to a friend in trust to be used for the purpose of advancing the principles of socialism. You state that since its formation, the Foundation has not solicited nor received funds from any other source. Its only receipts have been income on the investment of the original charitable contribution from the estate of Mr. Breeden.

You explain that periodic distributions are made from fund assets for various purposes which its Board of Trustees deem to be in accordance with the principles of the Foundation's creation. The Foundation would like to make political contributions to candidates for state, Federal or local office, but wishes to know whether this would make the Foundation a political committee. If it does become a political committee, the Foundation inquires as to the requirements that apply to its contributions in Federal elections.

Your letter raises issues regarding the circumstances which trigger political committee status. Your attention is directed to Advisory Opinion 1995-11, which explored, in part, this issue. Further, the Commission has published various guides to assist committees in understanding their requirements under the Act. For your information and guidance, copies of two of these guides, CAMPAIGN GUIDE FOR CORPORATIONS AND LABOR ORGANIZATIONS and CAMPAIGN GUIDE FOR NONCONNECTED COMMITTEES, as well as a copy of Advisory Opinion 1995-11, are enclosed.

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

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

Your letter lacks a complete description of the facts necessary for an advisory opinion request. Therefore, if after reviewing the enclosed materials you still wish to request an opinion, please provide the following information:

1. State the number of political contributions the Foundation may propose to make in 1996 and the amount of Foundation funds that may be used for such contributions. State what proportion of its 1995 investment earnings would be used for political contributions.

2. Describe the other purposes of disbursements made by the Foundation in 1995 and its proposed disbursements in 1996.

3. Provide any trust instruments or other documents describing the purposes of the Foundation and the specific purposes (and recipients) of any recent disbursements.

4. State whether the Foundation is incorporated and its current status under the Internal Revenue Code. If it is incorporated, provide copies of the Foundation's Bylaws and Articles of Incorporation.

After receiving the above information, 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, the enclosed materials or this letter, please contact the undersigned.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


N. Bradley Litchfield
Associate General Counsel

Enclosures:

Advisory Opinion 1995-11,
CAMPAIGN GUIDE FOR CORPORATIONS AND LABOR ORGANIZATIONS
CAMPAIGN GUIDE FOR NONCONNECTED COMMITTEES

THE BREEDEN-SCHMIDT FOUNDATION

ESTABLISHED TO ADVANCE THE PRINCIPLES OF SOCIALISM

C/O IRWIN GOSTIN
Post Office Box 711718
San Diego, California 92171-1718

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COMMISSION
SECRETARIAT

JAN 19 3 06 PM '96

Trustees:
Milton Lessner,
Chairman

Robert Manewitz

Aurora Torres

Carl Wood

Irwin Gostin
Secretary-Treasurer

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COMMISSION
OFFICE OF GENERAL
COUNSEL
JAN 19 9 59 AM '96

January 9, 1996

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

Re: Breeden-Schmidt Foundation

Dear Mr. Litchfield:

Thank you very much for your December 22, 1995 letter and enclosures. First, my original letter to you contained an error. The testamentary distribution which funded the Breeden-Schmidt Foundation came from the estate of Wilmer Breeden, not Wilbur Breeden.

After reading the materials you sent, we believe that we are not a non-connected committee and since the Breeden-Schmidt Foundation is unincorporated and not a labor union, we believe we are not a Political Action Committee. We therefore renew our request for an advisory opinion to that effect and, in addition to the factual material presented in our previous letter, we add the following:

We are enclosing a copy of the Declaration of Trust establishing the Breeden-Schmidt Foundation, dated March 4, 1987. We are also enclosing an addendum to the initial letter to the Registry of Charitable Trusts in Sacramento, California indicating that the Foundation expected to receive its initial funding from the estate of Wilmer Breeden around November, 1989. Those funds in the amount indicated were received on or about that date. The initial

N. Bradley Litchfield
January 9, 1996
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declaration of trust has been amended only to increase the number of board members from three to five.

A review of the Foundation's income and expenditures indicate that no transactions, other than receipt of the initial funding occurred in 1989 and that in 1990 only \$3137.00 was distributed for various charitable purposes in accordance with provisions of the trust. Of this amount, one \$500.00 contribution was made to a candidate for federal public office. By the end of the year the Fund's assets were in excess of \$1 million.

In 1991 over \$14,000 was distributed for various purposes which the Board of Trustees felt were consistent with the Foundation's purpose of advancing the principles of socialism. Of this amount, there was again one \$500.00 gift to a candidate for federal office.

In 1992 over \$21,000.00 of grants were made, mostly to libraries, publishing houses, civil liberties and civil rights organizations, labor organizations, etc. and of the total amount of grants \$3,800.00 was distributed to candidates for federal office. No individual candidate received in excess of \$1,000.00 per election campaign. (We understand this to be the contribution limit for individuals, and we have used this as a guideline for Foundation contributions.)

In 1993, over \$40,000.00 in grants for socialist purposes were made and of this amount, a total of \$600.00 was contributed to candidates for public office. In 1994, a total of \$3,100.00 was made to candidates for federal public office. Total contributions for socialist principles was in excess of \$24,000.00. Our figures for 1995 indicate that total grants were almost \$27,000.00 and of this amount \$1,500.00 was to candidates for federal public office.

Therefore, in accordance with the dictum stated in the advisory opinion 1995-11 regarding the Hawthorn Group, and the opinion in *Federal Election Commission v. Massachusetts Citizens for Life, Inc. (MCFL)* 479 U.S. 238.262 (1986), we feel that our election expenditures are not so great or extensive "that the organization's major purpose may be regarded as campaign activity."

So that there will be no confusion in this regard, we ask that you confirm this conclusion with an advisory opinion.

Your cooperation is appreciated.

Very truly yours,


Irwin Gostin

IG/tg

ADDENDUM


Re: Breeden-Schmidt Foundation

The Breeden-Schmidt Foundation was created as the result of a Declaration of Trust executed March 4, 1987, a copy of which is attached. That declaration was amended on June 30, 1987, and a copy of the amendment is attached. The option to increase the number of trustees was exercised on August 31, 1987, and a copy of that exercise is attached.

The trust intends to engage in non-tax exempt charitable activities and to expend funds earned by the trust for political and other activities to entities and causes which advance the principles of socialism and those causes related to socialism, consistent with the Declaration of Trust.

The trust expects to receive on or about November 15, 1989, funds from the Wilmer Breeden estate, San Diego Superior Court No. 140423, approximating \$972,000.

September 29, 1989



IRWIN GOSTIN, TRUSTEE

DECLARATION OF TRUST

THIS DECLARATION OF TRUST is made this *4th* day of *March*, 1987, by and between MILTON LESSNER (hereafter "TRUSTOR") and LOUIS S. KATZ, IRWIN GOSTIN and MILTON LESSNER (hereafter "TRUSTEES").

TRUSTOR desires to create a Trust to be known as the "BREEDEN-SCHMIDT FOUNDATION" (hereafter "the TRUST") and to grant to that trust all his right, title and interest in and to all proceeds to be derived by him from the Estate of Wilmer Breeden, presently being probated in the Superior Court of the State of California, County of San Diego, Case No. 140423.

1. By this instrument, TRUSTOR hereby gives and grants by way of donation to the TRUSTEES all his right, title and interest in and to the funds and/or property to be received by him from the Estate of Wilmer Breeden.

2. In accordance with the wishes as expressed by Wilmer Breeden in his Last Will and Testament, the TRUSTEES shall receive said funds and property for the following uses and purposes:

A. The TRUSTEES shall pay out such sums as contributions and subsidies and for conducting operations themselves to persons, entities and causes advancing the principles of Socialism and those causes related to Socialism. This shall include, but not be limited to, subsidizing

publications, establishing and conducting reading rooms, supporting radio, television and the newspaper media and candidates for public office.

B. The TRUSTEES are given full, complete and independent latitude to pay out the assets and income of this trust, with such latitude extending to the selection of the payees to receive such funds, contributions and subsidies and the amounts thereof and the purposes thereof.

3. TRUSTOR specifically declares that this is not intended to be a charitable trust, although the TRUSTEES may in the future, if they unanimously determine, apply for such designation and tax status. Unless that is done, however, the TRUSTEES are free to use the trust assets for non-charitable purposes as long as they determine that said purposes are consistent with the purpose of establishment of this trust.

4. TRUSTOR's promise to create and fund this trust as aforesaid is in consideration of receipt by TRUSTOR of property and or funds from the Estate of Wilmer Breeden. The Trust shall continue in existence until any of the following occurs:

- A. The TRUSTEES unanimously determine that the trust should be terminated;
- B. The trust purpose is fulfilled;
- C. The trust purpose becomes unlawful;
- D. The trust purpose becomes impossible to fulfill;
- E. The trust is revoked.

F. Forty-nine years from date of creation of the Trust.

On termination of the trust, the TRUSTEES continue to have the powers reasonably necessary under the circumstances to wind up the affairs of the trust, and the trust property shall be disposed of as follows:

A. In the event that the trust is revoked by TRUSTOR, as directed by TRUSTOR;

B. In the event that the trust is terminated by the unanimous action of the TRUSTEES, then as agreed by the TRUSTEES;

C. In any other event, as provided in the trust instrument or in a manner directed by the Court, that conforms as nearly as possible to TRUSTOR'S intent as expressed in the trust instrument.

5. The TRUSTEES shall signify their acceptance of the trust by signing this trust instrument.

6. A TRUSTEE shall not be required to give bond to secure performance of the TRUSTEE'S duties unless the TRUSTEES unanimously determine to make a bond a requirement.

7. If a vacancy occurs in the office of a TRUSTEE, the remaining TRUSTEES may act for the trust as if they are the only TRUSTEES.

8. If a TRUSTEE is unavailable to perform the duties of TRUSTEE because of absence, illness or other temporary incapacity, the remaining TRUSTEES may act for the trust when

necessary to accomplish the purpose of the trust or to avoid irreparable injury to the trust property as if they are the only TRUSTEES.

9. A TRUSTEE may at any time resign as TRUSTEE by giving written notice of his intention to withdraw and be discharged from duties of TRUSTEE to the remaining TRUSTEES. The liability for acts or omissions of a resigning TRUSTEE or if the sureties on the TRUSTEE'S bond, if any, is not released or affected in any manner by the TRUSTEE'S resignation.

10. A majority of the TRUSTEES may remove any of the TRUSTEES upon giving the TRUSTEE to be removed written notice thereof where:

- A. The TRUSTEE has committed a breach of the trust;
- B. Hostility or lack of cooperation among the TRUSTEES impairs the administration of the trust;
- C. The TRUSTEE fails or declines to act;
- D. For other good cause.

11. When a vacancy in the office of TRUSTEE occurs, the vacancy shall be filled by appointment of a new TRUSTEE to fill the vacancy, by the remaining TRUSTEE or TRUSTEES.

12. The TRUSTEES may, at their discretion, increase the number of TRUSTEES from the original three (3) to a total number of five (5).

13. The TRUSTEES shall be entitled to compensation and reimbursement for their costs, including the cost of establishing

this trust, and in receiving the proceeds of the Breeden Estate, in such reasonable amounts as the TRUSTEES may fix under the circumstances.

14. The TRUSTEES shall have all powers of investment, management, sale, exchange, partition, mortgage, leasing, insurance protection, improvement equipment dealing and disposition and all other powers of an absolute beneficial owner of the trust fund, and their powers shall not be restricted by any principle of construction, but shall operate according to the widest generality of which the foregoing words are capable.

15. Notwithstanding the discretionary powers conferred upon the TRUSTEES, said powers shall be exercised by the TRUSTEES reasonably.

16. The TRUSTEES have power to accept additions to the property of the trust from TRUSTOR or any other person.

17. The TRUSTEES may amend this trust by written amendment endorsed by a majority of the TRUSTEES.

18. This trust shall be interpreted under the laws of the State of California, and the TRUSTEES shall be given such additional powers as are allowed under California law at the time the TRUSTEES exercise their authority as TRUSTEES.

Dated: March 4, 1957

TRUSTOR: *Milton Lessner*
MILTON LESSNER

Dated: March 4, 1957

TRUSTEES: *Milton Lessner*
MILTON LESSNER
Louis S. Katz
LOUIS S. KATZ
Irwin Gostin
IRWIN GOSTIN

AMENDMENT TO DECLARATION OF TRUST

THIS AMENDMENT TO THE DECLARATION OF TRUST OF THE BREEDEN-SCHMIDT FOUNDATION is made this 30 day of June, 1987, by the Trustees, MILTON LESSNER, LOUIS S. KATZ and IRWIN GOSTIN. The Trustees unanimously amend the Declaration of Trust dated March 4, 1987, as follows:

1. Paragraph 3 of the Declaration is amended to read as follows:

"TRUSTOR specifically declares that this is not intended to be a charitable trust for tax purposes, although the TRUSTEES may in the future, if they unanimously determine, apply for such designation and tax status. Unless that is done, however, the TRUSTEES are free to use the trust assets for non-charitable purposes as long as they determine that said purposes are consistent with the purpose of establishment of this trust."

2. Paragraph 4F thereof is amended by the deletion of said subparagraph in its entirety.

3. In all other respects the Declaration of Trust is reaffirmed.

Dated: June 30, 1987.

TRUSTEES:


MILTON LESSNER


LOUIS S. KATZ


IRWIN GOSTIN

EXERCISE OF OPTION TO INCREASE NUMBER OF TRUSTEES

Pursuant to Paragraph 12 of the Declaration of Trust, the undersigned Trustees of the BREEDEN-SCHMIDT FOUNDATION, on this date, exercise the option granted to them by said Paragraph 12, and increase the number of Trustees from three to five.

The two additional seats were filled by the election of ROBERT MANEWITZ and IRMA LEE MANEWITZ to the Board of Trustees.

Dated: August 31, 1987.

TRUSTEES:


MILTON LESSNER


LOUIS S. KATZ


IRWIN GOSTIN

WE ACCEPT APPOINTMENT AS TRUSTEES:


ROBERT MANEWITZ


IRMA LEE MANEWITZ