richard welsh

To:RWelsh office of general counsel - From: Jim Schoener
13;20 12:12:44 02/5/95 2/29/96
Pages (including cover): 4

OFFICE OF GENERAL COUNSEL - att. BRADLEY LITCHFIELD

The information transmitted herein is a legal communication by counsel. This material may be privileged or confidential and is intended for the individual or organization named above. If this communication is misused it may be a violation of Federal Law.

Written copy of this communication will follow by mail.

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Supplement and
Time Extension to
AOR 1996-04

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and
Time Extension to
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Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

28 February 1996

Re; Advisory Opinion Request 1996-4

Dear Mr. Litchfield:

Pursuant to our telephone calls of yesterday and today, I understand that the Office of General Counsel and the Commission will not conclude their consideration of Advisory Opinion Request 1996-4 before expiration of the 20-day time period set forth in 2 U.S.C. Sec. 437 f. We recognize that the Commission is shorthanded by the unfilled Commission seat and that the Commission make-up is made up of two "hold-over Commissioners (awaiting the action by the White House in the appointment process). It is obviously difficult under these circumstances to obtain the requisite four votes for any proposed draft. But, as I am sure you and the Commission must realize the questions submitted constitute a real and present conflict to my client and his campaign (as well, I am sure to many other presidential primary candidates).

We have studied the draft opinion that your office has prepared and feel that it does not address the issues raise in our third question. Specifically, we are concerned with regard to the assurances that a qualified financial institution can be reliably secured in making a bank loan to our campaign.

The regulations you refer to in your draft opinion do not address our concern. Perhaps we were not clear in our request. The section you cite at page 5, line 1 (11 CFR 9036.2(d)) is explicitly written for the pre-ineligibility period; similarly, 11CFR 9037.1 does not address the post-date of ineligibility (DOI) circumstance. for a candidate who continues to campaign after that date .11CFR 9034.5 (f) (3), cited at page 6 lines 2-3, is addressed to the post-DOI period, but does not distinguish between the circumstances of candidates who terminate, and those who continue to campaign. You may recall that regulations were established to deal with this latter circumstance in part to respond to a contested repayment of a previous LaRouche campaign. See 11CFR 9034.4 (a) (3) (ii). The implication of that regulation concerns my client: We read this section as dealing with post-DOI additional submissions for matching funds, rather than with matching funds certified PRIOR to that date (but not paid, because of the Treasury Department interpretation of the "shortfall" provisions.) We seek clarification of this precise situation.

The hypothetical example you provided (page 6 lines 9-15) is in point. We do not contest the rules which set Net Outstanding Campaign Obligation (NOCO) the date of DOI, as a cap on matching funds subsequent to that date To use your example, we are not concerned that post DOI disbursements could not exceed $75,000. .We are concerned that not even that much would be disbursed, in the event the cited regulation is held to impose a lower limit.

Continuing with your example, in which DOI is March 30: If the next disbursement of matching funds were April 15 (as under the current schedule), then under the rule for continuing campaign circumstance, the candidate's matching funds entitlement could be construed as a much smaller, pro-rata portion determined by the ratio of pre-DOI matching funds certifications to matching funds plus private contributions. If that were, hypothetically, 25%, then the April disbursement would be 25% of $75000, or $18750. We do not believe this is what the Commission had in mind nor do we believe this was the intent of Congress in promulgating the provisions relied on. Since the Commission suggested the receivable was an asset upon which a financial institution could make a loan – certainly it must be a fixed asset that could not be defeated by a condition subsequent.

In the current circumstances (with a Treasury "shortfall" hold-back ,as presently exists) and, following your example a $75000 NOCO would show:

Assets:

Cash	$25,000	
Withheld matching funds	$200,000	
Total Assets		$225,000

Liabilities

Vendor Debt	$100,000	
Bridge loan payable	200,000	
Total Liabilities		$300,000

NOCO.....$75,000

Under these circumstances the post-DOI disbursements -- limited to 25% of $75,000, then the listing of the withheld matching funds as a receivable would be meaningless, of self-contradicting. We hope you and the Commission will answer our request on these fact situations.

This letter confirms that, on behalf of Lyndon H. LaRouche, Jr., I do consent and waive any objections to the Commission's further consideration of the subject opinion request after February 26, 1996. With the hope that you will address the matters referred to in this letter and the original request as promptly as possible, I submit this waiver and consent on the condition that your office and the Commission will conclude action on the opinion no later than March 14, 1996

cc. R. Welsh

Very truly yours,