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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA ITEM
For Meeting of: JUN 13 1996

June 6, 1996

MEMORANDUM

TO: The Commission

THROUGH: John C. Swina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan M. Levin
Senior Attorney

Subject: Draft AO 1996-18

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for June 13, 1996.

Attachment

DRAFT

1 ADVISORY OPINION 1996-18

2
3 Vincent J. Bollon
4 International Association of Fire Fighters
5 1750 New York Avenue, N.W.
6 Washington, D.C. 20006-5395

7
8 Dear Mr. Bollon:

9
10 This responds to your letter dated April 23, 1996, requesting an advisory opinion
11 on behalf of the International Association of Fire Fighters ("IAFF") concerning the
12 application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and
13 Commission regulations to the transmittal of funds held in a conduit account to the
14 IAFF's separate segregated fund.

15 The IAFF, a labor organization, has a separate segregated fund ("SSF") that is
16 registered with the Commission and identified as the International Association of Fire
17 Fighters Interested in Registration and Education PAC ("FIREPAC"). IAFF's state
18 affiliate in Wisconsin has recently opened a "conduit account" that is permissible under
19 Wisconsin State election law. You state that, under Wisconsin law, organizations are
20 permitted to establish conduit accounts for the purpose of raising voluntary personal
21 contributions to non-Federal candidates within the State of Wisconsin.

22 Specifically, a "conduit" under Wisconsin law is:

23
24 an individual who or an organization which receives a contribution of
25 money and transfers the contribution to another individual or organization
26 without exercising discretion as to the amount which is transferred and the
27 individual to whom or organization to which the transfer is made.

28
29 Wisconsin Statutes Annotated ("WSA") § 11.01(5m). Under Wisconsin State law, such
30 conduits are permitted to accept contributions only in the form of personal, voluntary
31 contributions. See WSA § 11.38(1)(a)(1). Wisconsin law also provides that the
32 individual who makes contributions to a conduit account determines how the contribution
33 is disbursed, and a contribution received from the conduit is considered to be a
34 contribution by the individual contributor, not by the conduit. WSA §§ 11.06(11)(c) and
35 11.26(12m). Under proposed Wisconsin Election Board rules, a conduit account may not

1 disburse an individual's contribution until the contributor provides an authorization. This
2 authorization may be made in writing, or may be made orally if a contemporaneous
3 written record of the oral authorization is made by the conduit administrator. Proposed
4 Rules, Wisconsin Administrative Code, EIBd. 1.855. In conversations with legal counsel
5 for the State of Wisconsin Elections Board, the Commission's Office of General Counsel
6 was informed that, because the funds in the conduit account, which were donated by the
7 individual contributor, are considered the contributor's funds, the contributor can direct
8 the conduit administrator to return some or all those funds to him or her. The conduit
9 account itself is a bank account, and the administrator keeps records of the funds that
10 belong to each individual contributor.

11 You ask whether an individual member of the IAFF and its Wisconsin affiliate
12 who makes a personal, voluntary contribution to the Wisconsin affiliate's conduit account
13 can subsequently provide written authorization to the conduit account to send a
14 contribution to FIREPAC, with the contribution attributed solely to the individual. For
15 example, a member would contribute \$100 to the conduit account. Then the member
16 would authorize, in writing, that the conduit send a \$50 contribution in the individual's
17 name to FIREPAC and a \$50 contribution to a non-Federal candidate. In your proposal,
18 you also point out that the conduit account has determined to restrict its solicitation
19 efforts to the state affiliate's membership and not accept contributions "from what the
20 FEC would identify as outside [the] restricted class, even though this is permissible under
21 the Wisconsin state election law."

¹ You have represented that IAFF will only solicit and accept contributions from its restricted class for contributions placed in the conduit. The Commission assumes this means that the members being solicited for contributions to be placed in the conduit are members of IAFF or of its component local union, according to the requirements of 11 CFR 114.1(e). See, in particular, 11 CFR 114.1(e)(4). The Commission notes, however, that the U.S. Court of Appeals for the D.C. Circuit has determined that the regulations defining membership promulgated in 1993 are too restrictive to accord with the membership standard set out by the Supreme Court in *Federal Election Commission v. National Right to Work Committee* ("NRWC"), 459 U.S. 197 (1982). *Chamber of Commerce of the United States v. Federal Election Commission*, 69 F.3d 600 (D.C. Cir. 1995), *on denial of petition for rehearing*, 76 F.3d 1234 (D.C. Cir. 1996). In pertinent part, the Court in NRWC stated that "some relatively enduring and independently significant financial or organizational attachment is required." *Chamber of Commerce*, 69 F.3d, at 605, citing NRWC, 459 U.S., at 204.

1 The Commission's response to your request requires an analysis of the role of the
2 conduit account, as well as the control the individual donor has with respect to funds he
3 or she donates to the conduit account. At the outset, the Commission notes that the
4 "conduit account" described in your proposal does not correspond to the conduit activity
5 addressed in 11 CFR 110.6(b)(2). See 2 U.S.C. §441a(a)(8). The activity addressed in
6 that regulation involves receiving and forwarding contributions that the individual
7 contributors have earmarked for specific Federal candidates or their authorized campaign
8 committees. Instead, your proposal entails a plan whereby individual IAFF members
9 who set aside funds in the conduit account will be solicited to contribute those funds to
10 FIREPAC. Therefore, the described "conduit account," would not incur any of the
11 reporting obligations described in 11 CFR 110.6(c) [61 *Fed. Reg.* 3550 (February 1,
12 1996)]. See Advisory Opinion 1981-57, n.3.

13 The issue of the control that the donor holds over the funds once deposited in the
14 conduit account is relevant to whether the later contribution to FIREPAC would be a
15 contribution from the individual only, or from the conduit account acting as a political
16 committee, e.g., another separate segregated fund of the IAFF, that would have to register
17 and report the receipt and disbursement of the funds. See 2 U.S.C. §431(4)(B). The funds
18 placed in the account remain under the control of the individual donor who alone
19 determines when and how much, if any, of those funds will be contributed to FIREPAC.
20 See Advisory Opinion 1981-21. The IAFF and FIREPAC do not control the funds
21 received and do not determine when or to whom such funds are disbursed. The conduit,
22 therefore, is not accepting or making contributions for the purposes of the Act and is not a
23 political committee that would have to report the receipt and disbursement of such funds.
24 Instead, it is simply an accounting process by which funds donated by individual IAFF
25 members are set aside, awaiting their future direction for disbursement as contributions
26 by them to FIREPAC. Compare 11 CFR 114.11(c).

27 Although the contribution sent to FIREPAC would be a contribution from the
28 individual only and not from the conduit account, the IAFF would incur certain
29 obligations under the Act and Commission regulations as a collecting agent once the
30 IAFF member authorizes the conduit account to make a contribution for that member to

1 FIREPAC. The collecting agent regulations provide that an individual's contribution of
2 \$50 or less shall be forwarded to that committee's treasurer within 30 days of receipt. 11
3 CFR 102.6(c)(4) and 102.8(b)(1). If the contribution exceeds \$50, the collecting agent
4 must forward the contribution within 10 days of receipt, along with the name and address
5 of the contributor and the date of receipt of the contribution. 11 CFR 102.8(b)(2). For
6 contributions over \$200, the contributor's occupation and employer must also be
7 forwarded. 11 CFR 102.8(b)(2).

8 In the situation presented, it appears that an IAFF member with funds in the
9 conduit account may direct that his or her funds be contributed to FIREPAC beyond 10
10 days or 30 days from the conduit account's receipt of those funds. As indicated above,
11 the Commission's approach to circumstances where a corporation or labor organization
12 acts as a collecting agent would apply. In Advisory Opinion 1984-31, the Commission
13 considered a situation in which a corporation's state PAC proposed to transfer funds to
14 the Federal PAC. These funds consisted of voluntary donations previously received from
15 persons in the corporation's restricted class. The Commission stated that, since the
16 corporation already had a Federal PAC, the state PAC could avoid triggering political
17 committee status by acting as a collecting agent under 11 CFR 102.6(b) and (c), i.e., by
18 obtaining written authorizations from the individual contributors. Each contribution
19 included in the amount transferred would be reported by the Federal PAC as a
20 contribution from the individual. See 11 CFR 102.6(c)(7). Although the time limits for
21 transmittal were not directly addressed in this opinion, the contributions would be sent to
22 the Federal PAC well after their donation to the state PAC. Implicit in the opinion was
23 the treatment of the donations as a contributions to the SSF at the time the state PAC
24 received the contributor's written authorization for the purposes of the time limits.
25 Similarly, the IAFF conduit account will meet the requirements of 11 CFR 102.6(c)(4)
26 and 102.8(b) if it transmits the contribution to FIREPAC, along with the requisite
27 information, within 10 or 30 days (depending upon the amount transmitted) after the
28 individual directs that his or her contribution be made to FIREPAC.

29 Subject to the foregoing conditions, the Commission concludes that your proposal
30 may be implemented, with the contribution attributed solely to the individual. The

1 Commission notes that this opinion does not address questions pertaining to any use of
2 this conduit account for the earmarking of contributions to Federal candidates or
3 authorized committees through FIREPAC since that situation was not presented.

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

7 Sincerely,

8
9 Lee Ann Elliott
10 Chairman

11
12 Enclosures (AOs 1984-31, 1981-57, and 1981-21)

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