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PRESIDENT
E. CLARK RICHARDSON

April 22, 1996

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Re: Advisory Opinion Request by the Business Council of Alabama

APR 26 12 20 PM '96

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Ladies and Gentlemen:

The Business Council of Alabama ("BCA") hereby requests that the Federal Election Commission issue an advisory opinion pursuant to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 437f(a)(1) ("the Act"), and Commission regulations, 11 C.F.R. § 112.1. Specifically, BCA requests an advisory opinion to allow BCA to make certain communications with its members regarding candidates for federal office. BCA seeks advice on the applicability of the rules contained in 11 C.F.R. §§ 114.1, 114.3 and 114.7 to BCA's proposed federal election program which will endorse Federal candidates and urge BCA's non-corporate members and individual representatives of BCA's corporate members to make contributions directly to the campaign committees of such candidates.

A. Organization

1. Background

BCA is a nonprofit corporation organized under the Alabama Nonprofit Corporation Act, and is designated a Section 501(c)(6) organization under Title 26 of the U.S. Code. It was established in 1985, with the consolidation of the Alabama Chamber of Commerce and Associated Industries of Alabama, to represent Alabama business and industries at the state and federal levels.

BCA maintains a state political committee ("ProgressPAC") which makes campaign contributions to state and local candidates. ProgressPAC was created pursuant to the Alabama Fair Campaign Practices Act and the Alabama Business Corporation Act, Alabama Code §§ 17-22A-5 and 10-1-2. ProgressPAC has

never made contributions to Federal candidates, nor has it endorsed any Federal candidates. At the present time, BCA has no connection with any Federal separate segregated fund.

2. Purposes

As stated in its bylaws, BCA is organized to promote the general welfare of Alabama and its citizens by advancing educational, civic, social, commercial and economic interests of the State. Its efforts involve encouraging the development and retention of industry, agriculture, commerce and recreational activities; promotion of good employer-employee relations, and closer relationships among agriculture, education, business and industry. BCA engages in research on various issues and makes communications to the public to promote understanding of business and industry issues.

B. Membership of BCA

1. Composition

The membership of BCA consists of individuals, firms, partnerships, organizations, and corporations. BCA has approximately 5,200 members at the present time. BCA's members include 3414 corporations with fewer than 100 employees, 1257 corporations with more than 100 employees, 304 professional organizations, 73 chambers of commerce, 36 business or trade associations and 21 individuals.¹

2. Requirements

Article III of the BCA Bylaws prescribes the requirements for admission to membership in BCA, and the rights and duties of its members. Membership is open to individuals, firms, partnerships, organizations, and corporations interested in the objectives of BCA. Art. III, 3.1. Applicants for membership must be recommended by a member of good standing, Art. III, 3.2, and applications for membership must be approved by the Board of Directors. Art. III, 3.1. Members may be suspended by a two-thirds vote of the Board of Directors. Art. III, 3.3.

BCA actively solicits new members through telemarketing and networking of existing members. BCA expressly acknowledges the acceptance of a new member by sending a "welcome letter" from the Chairman of BCA, along with materials outlining the benefits of membership in BCA. Each member of BCA

¹BCA's membership records do not state whether members such as professional organizations, chambers of commerce, and business and trade associations are corporations.

receives a monthly newsletter, and new members are listed in a special section of the newsletter. Every member of BCA is required to pay dues on an annual basis.

Dues for membership categories are prescribed by the Board of Directors pursuant to Article III, 3.4 of the Bylaws. The following categories have been established by the Board of Directors based on the size of the member organization:

1-10 employees	\$150
11-25 employees	\$250
26-49 employees	\$325
50-100 employees	\$400
101-200 employees	\$550
201-300 employees	\$650
301-400 employees	\$750
401-500 employees	\$850

Over 500 employees..\$850 plus an increment of at least \$1.00 per employee.

Dues are payable in advance for each fiscal year, and membership in good standing ceases upon failure to pay dues within 90 days of the date on which they are payable. Art. VIII, 8.2

The Board of Directors oversees the general management of BCA and directs its affairs. Art. V, 5.1. The Board of Directors is elected at the annual meeting of the members. Each member is entitled to one vote at a meeting of the members, and additional votes (up to a total of five votes per member) are given for increments of \$500 in dues. Art. III, 3.5. The Board consists of 104 members, who are divided into districts. Art. V, 5.2. The districts are allocated a number of directors based on the number of BCA members in that district. In addition, there are not less than five At Large members of the Board, who are voted upon by all the members of BCA. Art. V, 5.2.

C. Proposed Communications Concerning Federal Candidates

BCA proposes to engage in a program whereby it would evaluate federal candidates and their positions regarding matters of concern to BCA members. After making its analysis and determining how well candidates would represent the interests of its membership, BCA would communicate with all of its members to express its support for or opposition to certain candidates. Further, BCA proposes to urge its members to support or oppose such candidates, and to make contributions, where appropriate, directly to the campaigns of certain candidates. In the case of corporate members, BCA would contact the individual contact person

through whom BCA normally communicates with the corporate member.² Of course, no corporate contributions could or would be sought.

In addition to advocating the election or defeat of certain candidates, BCA would encourage its members and/or its contact person(s) to make contributions to candidates. BCA proposes to provide information regarding how to make such contributions such as providing the names and addresses of the candidates' principal campaign committee. BCA would not provide the means to make such contributions (such as envelopes addressed to candidates) nor otherwise facilitate the making of contributions. BCA would not receive or relay contributions. However, BCA would ask its members to inform BCA of the amount contributed and the candidates to whom contributions were made. The communication containing candidate endorsements would be produced at BCA's expense, and would constitute the views of BCA rather than a distribution or reproduction of materials prepared by any candidate or other entity.

To state BCA's question succinctly:

After endorsing a federal candidate, can BCA communicate the endorsement and encourage individual contributions to the endorsed candidate through communications with its non-corporate members and with the "contact person" through whom BCA normally communicates with its corporate members?

D. Discussion

Under the regulations promulgated by the Commission, BCA would be considered a "membership association." 11 C.F.R. § 114.1(e)(1). The members of BCA satisfy the criteria for membership set forth in 11 C.F.R. § 114.1(e)(2) because they are required to pay dues and are entitled to vote for district representatives and at-large members on BCA's Board of Directors. Thus, BCA is allowed to send partisan communications, including endorsements of particular candidates, to its members. 11 C.F.R. § 114.3(a)(2). Under Advisory Opinion 1987-29, an organization such as BCA can provide its members with the names and addresses of endorsed candidates and their campaign committees. In addition, BCA is allowed to encourage its members to contribute directly to a federal candidate. The question that arises is whether BCA can send partisan communications to its corporate members.

BCA proposes to include all of its members in its communication program. Under the Commission's regulations, it is allowed to send such communications to

²BCA members normally designate one or several "contact persons" to receive BCA communications, attend meetings, serve on committees, and so forth. BCA communicates with its 5200 members through 6300 "contact persons."

the executive and administrative personnel of BCA and their families, as well as to the members of BCA and their families. 11 C.F.R. § 114.7(h). However, the regulations do not expressly state that a membership organization can send partisan communications to its corporate members. The regulations merely provide that corporate members of a membership organization cannot contribute to the separate segregated fund of the membership organization. 11 C.F.R. § 114.7(b). BCA would like to send its partisan communications to the "contact persons" at its corporate members to inform these individuals of BCA's endorsements and to urge them to contribute to the candidates endorsed by BCA. These "contact persons" would be the individuals with whom BCA normally communicates or conducts its activities. The regulations at 11 C.F.R. § 114.8(h) specifically allow "trade associations" to send this type of information to the representatives of their corporate members, and BCA submits that "membership organizations" should be allowed to do so as well.

BCA's analysis and endorsement of Federal candidates would be pointless unless the representatives of its corporate members are allowed to receive the partisan communications planned by BCA. The executive and administrative personnel of BCA consist of 34 individuals. BCA has only 21 individual members, who comprise less than 1% of its membership. A partisan communication directed to the individual members of BCA and the executive and administrative personnel of BCA would be sent to only 55 addresses. However, if all of its members are included in the program, BCA could contact 6300 individuals representing diverse interests all over the State of Alabama. BCA is seeking an advisory opinion from the Commission that it is allowed to send partisan communications, including candidate endorsements, to individual representatives of its corporate members.

BCA's proposed communication does not violate any statutory or regulatory provision. The Act and the Commission's regulations are silent on whether a membership organization such as BCA can direct partisan communications to the representatives of its corporate members. Although the Act prohibits corporate expenditures in Federal elections, it specifically allows membership organizations to communicate with their "members." 2 U.S.C. § 431(9)(B)(iii). The general prohibition against corporate contributions to Federal candidates would not be violated by BCA's proposed communication because no corporate contributions would be requested or suggested. Instead, the BCA would be informing individuals of the candidates' positions on business issues and encouraging these individuals to support candidates endorsed by BCA. By engaging in this Federal candidate program, BCA would be exercising its First Amendment right to communicate with its members. As one Court has noted, a definition of "member" that is overly restrictive places an impermissible burden on the First Amendment rights of organizations with members. *Chamber of Commerce of the United States v. Federal Election Commission*, 69 F. 3rd 600, 605 (D.C. Cir. 1995).

Thus, BCA should be permitted to contact the corporate representatives with whom it normally communicates or transacts its business to discuss its analysis and endorsement of Federal candidates.

We look forward to your response. Please call me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'E. Clark Richardson', with a long horizontal flourish extending to the right.

**E. Clark Richardson
President
Business Council of Alabama**

Enclosure: Business Council of Alabama Bylaws

Business Council of Alabama By-Laws

ARTICLE I

Name

The name of this organization shall be Business Council of Alabama.

ARTICLE II

Purposes and Objectives

- 2.1 The purposes for which BUSINESS COUNCIL OF ALABAMA ("Council") is organized are as follows:
- (a) To promote the general welfare of the State of Alabama and its citizens by advancing the educational, civic, social, commercial and economic interest of Alabama.
 - (b) To encourage the development and retention of existing industry, agriculture, commerce and recreational activities in Alabama;
 - (c) To promote and encourage the establishment of new industries as well as agriculture, commercial and recreational pursuits in Alabama;
 - (d) To identify and define governmental, educational, industrial, and other types of problems affecting Alabama business and industry, to encourage cooperative action to address these problems and to act as a united spokesman for business and industry on matters of national and statewide interest;
 - (e) To maintain and promote the integrity and efficiency of the free enterprise system by encouraging responsible actions by business and industries and by discovering and correcting any abuses;
 - (f) To cooperate in bringing about a more equitable and efficient governmental administration through the gathering and dissemination of factual information and by encouraging a wider interest in governmental affairs;
 - (g) To promote fair and friendly relations between employer and employee and a closer relationship between agriculture, education, business and industry;
 - (h) To engage in research, answer inquiries, conduct referenda, maintain records and publicize through all available media the findings and recommendations of this organization so as to enhance public understanding of issues affecting business and industry;
 - (i) To own, buy, sell, mortgage, lease or rent to or from others, hold, occupy, use, improve, develop, exchange, and make any lawful contract pertaining to property of all kinds, real, personal and mixed, wherever located;
 - (j) To enter into, make and perform contracts of every kind for any lawful purpose with any person, firm, association or corporation, town, city, county, body politic, state, territory, government or colony or dependency thereof;
 - (k) To do all things within the scope of United States Code, Title 26, Section 501, c(6) having to do with corporations not organized for profit and no part of the net earnings of which inures to the net profit of any member or individual;
 - (l) To undertake and engage in all affairs necessary or appropriate to the consummation of the foregoing purpose for which this corporation is created.
- 2.2 BUSINESS COUNCIL OF ALABAMA shall have all the powers now or hereafter conferred on a non-profit corporation under the Alabama Non-profit Corporation Act and other laws of the State of Alabama.

ARTICLE III

Membership

- 3.1 The membership shall consist of individuals, firms, organizations, or corporations who are interested in the objectives of the Council and whose applications for membership are approved by the Board of Directors.
- 3.2 Applications for membership must be recommended by a member of good standing. Categories of membership may be prescribed from time to time by the Board.
- 3.3 Any member of the Council may be suspended by two-thirds vote of the Board of Directors. Resignation of a member shall be presented in writing to the Board of Directors.
- 3.4 The dues for various categories of membership shall be prescribed from time to time by the Board of Directors.

- 3.5 Each member shall have one vote at any regular or special meeting of the members and any member with dues in excess of \$500 shall have an additional vote for each \$500 of dues, but in no event shall any member have more than five votes.

ARTICLE IV

Meetings

- 4.1 All meetings of the members shall be held in the State of Alabama. The annual meeting of the members shall be on the second Thursday in October in Birmingham at Noon, unless the Board approves a change. The Council shall give reasonable notice to all members of the time and place of every meeting and a quorum shall be considered to be fifty votes present at any such meeting. Special meetings of the membership shall be called by the Board or the Chairman as necessary with not less than twenty days notice.

ARTICLE V

Board of Directors

- 5.1 Management: The general management and direction of the affairs of the Council shall be vested in a Board of Directors ("Board").
- 5.2 The Board shall consist of not less than sixty members elected by the membership at its annual meeting. The Council districts shall be allocated a number of Directors in direct proportion to the number of members in a district to the total membership of the Council. In addition, there will be At Large Board Directors whose number shall not be less than five and the number of At Large Directors shall be prescribed from time to time by the Board.
- 5.3 Powers of the Board: The Board shall have general control and management of the property and business affairs of the Council. It shall also have the power to fill vacancies on the Board and may exercise all powers of the Council and do all such lawful acts not expressly prohibited by these By-Laws or the Articles of Incorporation.
- 5.4 Executive Committee: The Executive Committee shall include the immediate past Chairman of the Board (who shall be the Chairman of the Executive Committee), The Chairman, 1st Vice Chairman, 2nd Vice Chairman, Treasurer and all District Chairmen and two Directors to be appointed by the Chairman. The Chairman of the Trustees of BCA's Self-Insured Workers' Compensation Fund shall be an ex officio member of the Executive Committee. The President and General Counsel shall be non-voting members of the Executive Committee. The Committee shall have and exercise all powers of the Board in management of the property and business of the association when necessary between Board meetings and any other time in which a special called meeting of the Board is not feasible. Said committee shall keep regular minutes of its proceedings and all actions taken by the committee shall be subject to ratification by the Board.
- 5.5 Finance Committee: Members of the Finance Committee shall be the Chairman of the Board, the Chairman of the Executive Committee, 1st Vice Chairman (who shall serve as Chairman), 2nd Vice Chairman, Treasurer and one member of the Executive Committee appointed by the Board.
- 5.6 The Board shall meet not less than three (3) times each year. Said meeting shall be held on the second Thursday of the month unless changed by the Chairman. Special meetings shall be called by the Chairman as necessary. At least seven (7) days notice of each meeting shall be given to all Board members. A quorum of the Board shall consist of twenty (20) members.
- 5.7 The Chancellor of the University of Alabama System and the President of Auburn University shall serve as ex officio members of the Board.

ARTICLE VI

Officers

- 6.1 The Board shall annually elect from their number the Chairman of the Board, a 1st Vice Chairman, a 2nd Vice Chairman of the Board, a President, the District Chairmen, the Treasurer and General Counsel.
- 6.2 Chairman of the Board: The Chairman shall be the chief executive officer of the Council and shall preside at meetings of the Board and the Council and appoint all committees subject to approval of the Board. The Chairman shall be ex-officio member of all committees.
- 6.3 1st Vice Chairman: 1st Vice Chairman of the Board shall assist the Chairman in all matters pertaining to the Council and coordinate all activities of the committees. He shall act in the absence or during the disability of the Chairman and shall perform duties as authorized by the Chairman.

- 6.4 **President:** The Board shall elect a full time President and fix his period of employment. He shall be the chief operating officer of the Council with responsibility for the management and direction of all operations, program activities and affairs of the council. The President shall conduct the business of the council as directed by the Chairman.
- 6.5 **Treasurer:** The Treasurer shall supervise the handling of the funds and preparation of the budget, countersign checks and render a financial statement of the Council at each regular Board meeting and the annual membership meeting.
- 6.6 **The Chairman of the Board shall appoint all committee chairmen and vice-chairmen subject to approval and confirmation of the Board and shall have the power to create new or abolish present committees with approval of the Board with the exception of the Executive and Finance Committees.**
- 6.7 **Indemnification:** The Council will indemnify a board member, officer or employee to the full extent permitted by Sections 10-3A and 10-11-1 of the 1975 Code of Alabama, and to such additional extent, if any, as amendment of the Alabama law may hereafter permit.

ARTICLE VII

Elections

- 7.1 The election of the Board of Directors shall be held at the annual meeting of the membership provided however that vacancies of the Board existing or occurring in the interim may be filled by the Board on nominations made at any regular meeting of said Board or at any special meeting and acted upon at the following regular meeting. Directors shall be elected by the members of the Council for a term of office for one, two or three years in such manner that the term of one-third of the authorized Directors will expire each year. Directors shall be eligible for re-election.
- 7.2 In carrying out the provisions of this section the Chairman with the advice and counsel of the Executive Committee shall appoint a nominating committee of five members of the Board. The nominating committee shall make its report to the Chairman at least forty days before election and the Council shall mail official ballots showing all nominations to all members at least ten days prior to the annual meeting.
- 7.3 Any active member of the council may be placed in nomination by petition signed by twenty percent of the members within his district providing the petition is in the hands of the Chairman at least twenty days prior to election.
- 7.4 The newly elected officers and directors shall take office the first day of the month following their election.

ARTICLE VIII

General Policies

- 8.1 **Fiscal Year:** The Fiscal year shall begin November 1 of each year and end on October 31 of the following year.
- 8.2 **Dues:** Dues shall be due and payable in advance for each fiscal year. Should any member fail or refuse to pay the dues within ninety days after the same are due and payable it shall cease to be a member in good standing of the Council.
- 8.3 **Audit:** At the close of each fiscal year an audit shall be made of the books and of all accounts in the name of the Council by a certified public accountant approved by the Finance Committee.

ARTICLE IX

Amendments

- 9.1 These By-Laws may be amended by three-fourths of the members present at a general membership meeting provided that notice of the amendment shall be given at least ten (10) days in advance of said meeting. The By-Laws may also be amended by three-fourths vote of the Directors present at a regular Board meeting provided that notice of the amendment has been read at the last regular or special meeting of the Board.



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SECRETARIAT

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E. CLARK RICHARDSON

AOR 1996-21

May 2, 1996

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

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OFFICE OF GENERAL
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Re: Advisory Opinion Request by the Business Council of Alabama

Ladies and Gentlemen:

The Business Council of Alabama ("BCA") submits this letter as a supplement to the April 22, 1996 request that the Federal Election Commission issue an advisory opinion pursuant to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 437f(a)(1) ("the Act"), and Commission regulations, 11 C.F.R. § 112.1.

Every member of BCA is required to pay dues on an annual basis. The schedule for membership dues is applicable to all members of BCA on a uniform basis regardless of whether a member is an individual or a corporation. Membership dues are established by the Board of Directors pursuant to Article III, 3.4 of the Bylaws. The following categories have been established by the Board of Directors based on the number of employees of each member organization:

1-10 employees	\$150
11-25 employees	\$250
26-49 employees	\$325
50-100 employees	\$400
101-200 employees	\$550
201-300 employees	\$650
301-400 employees	\$750
401-500 employees	\$850

Over 500 employees..\$850 plus an increment of at least \$1.00 per employee.

An individual member of BCA is placed in the category of 1-10 employees and is required to pay annual dues of \$150. For example, if an individual is self-

employed and has no other employees, his membership dues would be \$150 per year.

Please call me if you need any additional information about the Business Council of Alabama.

Very truly yours,

A handwritten signature in black ink, appearing to read "E. Clark Richardson", with a long horizontal line extending to the right.

E. Clark Richardson
President
Business Council of Alabama