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FEDERAL ELECTION COMMISSION

Washington, DC 20463

July 18, 1996

AGENDA ITEM

For Meeting of: JUL 25 1996

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan M. Levin
Senior Attorney

Subject: Draft AO 1996-28

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for July 25, 1996.

Attachment

DRAFT

1 ADVISORY OPINION 1996-28

2
3 Richard W. Shaffer
4 740 Hamilton Mall
5 Allentown, PA 18101-2488

6
7 Dear Mr. Shaffer:

8
9 This responds to your letters dated May 2 and June 20, 1996, requesting an
10 advisory opinion on behalf of the Lehigh Valley Citizens for Don Ritter ("the
11 Committee") concerning the application of the Federal Election Campaign Act of 1971,
12 as amended ("the Act"), and Commission regulations to the personal use of campaign
13 funds, including funds owed to the campaign pursuant to a court judgment.

14 The Committee is the principal campaign committee of former Congressman Don
15 Ritter of Pennsylvania. Mr. Ritter was elected to the House in 1978. In 1992, Mr. Ritter
16 was defeated in his race for re-election. Since then, Mr. Ritter has not been a Federal
17 candidate, and the Committee has proceeded to wind up its affairs. In its most recent
18 reports filed with the Commission, covering activity up to December 31, 1995, the
19 Committee has sought to terminate its political committee status. The Commission's
20 Reports Analysis Division has notified the Committee that it could not terminate until it
21 submitted a statement regarding the disposition of its residual funds.

22 The Committee presently has cash on hand totaling approximately \$27,000. In
23 addition, the Committee is owed funds from Jerome Kindrachuk, the former treasurer,
24 pursuant to a court judgment. In 1989, Mr. Kindrachuk was found guilty of stealing
25 funds from the Committee. On July 12, 1989, the U.S. District Court ordered Mr.
26 Kindrachuk to make restitution in the amount of \$40,000 to the Committee. None of this
27 amount had been repaid as of November 30, 1989. According to reports filed by the
28 Committee, Mr. Kindrachuk began to make restitution payments pursuant to this order in
29 November 1994, and, since then, has repaid \$32,000, but you state that "it remains
30 uncertain as to whether or not he will make the balance of the payments."¹

¹ You enclose a copy of a repayment agreement signed by Mr. Kindrachuk on June 5, 1995, and witnessed by a probation officer in the U.S. District Court for the Eastern District of Pennsylvania. This agreement refers to the 1989 restitution order and the fact that, as of the date of the agreement, Mr.

1 Section 439a of Title 2 and 11 CFR 113.2(d) provide that excess campaign funds
2 may not be converted by any person to any personal use other than for certain specified
3 purposes.² See 11 CFR 113.1(g) for the definition of “personal use.” However, pursuant
4 to the Ethics Reform Act of 1989, Pub. L.101-194, and Commission regulations at 11
5 CFR Part 113, a “qualified Member” of Congress who did not serve in the 103d Congress
6 (covering the period from January 3, 1993, to January 3, 1995) or a later Congress may
7 convert to personal use an amount equal to the unobligated balance of excess funds as of
8 November 30, 1989. 11 CFR 113.2(e)(1) and (5). A “qualified Member,” also known as
9 a “grandfathered member,” is defined as an individual who was serving as a Senator or
10 Representative on January 8, 1980. 11 CFR 113.1(f).

11 Mr. Ritter was serving in the House of Representatives on January 8, 1980, and
12 did not serve in the 103d Congress or a subsequent Congress. He is therefore a qualified
13 member who may convert excess campaign funds to personal use up to the amount
14 allowed in 11 CFR Part 113. Mr. Ritter wishes to convert to his personal use the amount
15 that the Committee presently has on hand, plus the amount still owed by Mr. Kindrachuk
16 to the Committee. You maintain that this amount is substantially lower than the
17 Committee’s unobligated balance as of November 30, 1989.

18 Commission regulations specify how the unobligated balance is to be calculated.
19 One of two methods may be used. Under the first method, the “cash assets” method, the
20 amount is the authorized committee’s cash on hand on November 30, 1989, determined
21 under 11 CFR 104.3(a)(1), less the committee’s total outstanding debts as of that date.
22 Under 11 CFR 104.3(a)(1), cash on hand includes currency; balance on deposit in banks,
23 saving and loan institutions, and other depository institutions; traveler’s checks owned by
24 the committee; certificates of deposit, treasury bills and any other committee investments
25 valued at cost. 11 CFR 113.2(e)(1)(i).

Kindrachuk still owed money to the Committee. Pursuant to the agreement, Mr. Kindrachuk would “continue to make restitution payments directly to [the Committee],” and agreed that “a judgment be entered against him ... in the amount of \$24,000 in favor of [the Committee].” Mr. Kindrachuk further agreed that he would make monthly payments of at least \$1,000.

² Excess campaign funds are defined as “amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures. 11 CFR 113.1(e).

1 The second method is the “cash plus nonliquid assets method.” This method is as
2 follows: The member may convert unliquidated committee assets held by his or her
3 authorized committee on November 30, 1989, or the value of such assets may be added to
4 the amount of the cash assets as determined under the “cash assets” method. In either
5 case, prior to the conversion, the committee must amend its 1989 year end report to
6 indicate, as memo entries to Schedule A (Receipts), the assets to be converted. 11 CFR
7 113.2(e)(1)(ii)(A).³ Most relevant to this request, the member may add to the unobligated
8 balance the value of debts and loans reported as owed to the committee as of November
9 30, 1989, and itemized on the committee’s year end report for 1989, provided that such
10 receivables are actually collected by the committee prior to the termination. 11 CFR
11 113.2(e)(1)(ii)(B). Finally, the member may add the value of vendor credits and deposit
12 refunds to which the committee is entitled, if such receivables were itemized on Schedule
13 C or D of the 1989 year end report or in amendments to that report. 11 CFR
14 113.2(e)(1)(ii)(C).

15 Under either method, if the unobligated balance subsequently falls below the
16 November 30, 1989, level, the member may use lawful contributions, or other lawful
17 committee income received after that date, to restore the account to that level. 11 CFR
18 113.2(e)(2). The member may also convert committee assets which were not held on
19 November 30, 1989, to personal use but the fair market value of such assets at the time of
20 conversion shall be counted against the unobligated balance. 11 CFR 113.2(e)(3). Under
21 no circumstances may an amount greater than the unobligated balance on November 30,
22 1989, be converted to personal use. 11 CFR 113.2(e)(4).

23 According to bank statements of the Committee’s checking account, the
24 Committee’s checking account balance on November 30, 1989, was \$34,979.12. You
25 note that the amount in the account plus the amount owed in restitution was \$74,979.12
26 on that date. However, as provided in the regulations cited above, in order to include

³ The amendments must list each asset, give its date of acquisition, its fair market value as of November 30, 1989, and a brief narrative description of how this value was ascertained. In its termination report, the committee must disclose the disposition made of each asset, including the fair market value on the date of such disposition, unless the asset was sold or otherwise disposed of during an earlier period and included in the report covering that period.

1 amounts owed to a committee in its unobligated balance, such amounts must be itemized
2 on the committee's 1989 year end report.

3 The regulation regarding the addition of obligations owed to the committee that
4 were reported on the 1989 year end report became effective on November 6, 1991.
5 Although the Committee was owed \$40,000 pursuant to a court order that was issued
6 over four months before the relevant date and, thus could have included this total (none of
7 it having been repaid) in the November 30, 1989, figure, the Committee did not begin to
8 report this obligation as an amount owed to the Committee until an "amended"
9 Termination Report covering the period from July 1 to August 31, 1995 was filed on
10 August 31, 1995.⁴ Moreover, the continuous reporting of such obligations (until
11 extinguished) is a requirement for all political committees regardless of whether they are
12 used to compute convertible funds, and this requirement has been in effect in
13 Commission regulations since 1977. 11 CFR 104.11(a); see also 2 U.S.C. §434(b)(8).
14 The Committee failed to treat the 1989 restitution order as an obligation owed to the
15 Committee until almost four years after this obligation should have first been reported for
16 the purposes of 11 CFR Part 113, as well as over five and one-half years after the
17 obligation to report regardless of its use. Accordingly, it appears that the Committee has
18 not satisfied the requirements for including this obligation in the amount of excess
19 campaign funds that Mr. Ritter may convert to personal use.

20 The Commission also notes that the bank balance figure (approximately \$35,000)
21 may be altered by other considerations. Under either method, the Committee would have
22 to subtract debts and obligations owed by the Committee as of November 30, 1989.⁵ An
23 example of how the figure may be increased is the addition, under the second method, of

⁴ At that point, the Committee had reported payments from Mr. Kindrachuk totaling \$18,000 and an outstanding obligation to the Committee of \$22,000.

⁵ The Committee's 1989 year end report does not disclose any debts owed by the Committee as of the end of the year, but discloses disbursements in December 1989 to various vendors of goods and services. Some of the obligations to pay those vendors may have existed on November 30, 1989. To that extent, the cash balance would need to be reduced.

1 the value of vendor credits and deposit refunds owed to the Committee on that date, if the
2 1989 year end report or amendments to that report reflect these receivables.⁶

3 The Committee must also review its disbursements made from December 1, 1989,
4 to the present to determine which disbursements would constitute personal use of
5 Committee funds. See 11 CFR 113.1(g). Those disbursements that would constitute
6 personal use must be subtracted from the amount available to Mr. Ritter.

7 The Committee has expressed its desire to terminate, and the principal obstacle
8 appears to be the need for a plan to dispose of residual funds. If the Committee wishes to
9 terminate now, Mr. Ritter may convert that portion of the actual cash on hand that would
10 be permissible under the regulations cited above (assuming all outstanding debts owed by
11 the Committee are also paid).⁷ The Committee should also file a termination report with
12 a statement as to the use of the cash on hand that he may not be able to convert to
13 personal use and the amounts still owed by Mr. Kindrachuk. 11 CFR 102.3(a)(1). Such
14 use must be for a purpose permissible under 2 U.S.C. §439a and 11 CFR 113.2(b)-(d),
15 i.e., a transfer to a national, State or local party committee, a contribution to any
16 organization described in 26 U.S.C. §170(c), or any other lawful purpose that does not
17 constitute personal use under 11 CFR 113.1(g). 11 CFR 113.2(e)(4); see also 11 CFR
18 113.2(f).

19 If the Committee presently does not have sufficient cash on hand to equal the
20 level of the excess funds that Mr. Ritter could lawfully convert to personal use in
21 accordance with this opinion, the Committee may continue to report until continued
22 restitution payments by Mr. Kindrachuk bring the Committee's cash on hand to that level.
23 At that point, Mr. Ritter may convert the cash on hand to personal use (assuming the
24 Committee pays its existing debts), and the Committee may file a termination report with
25 a statement as to the use of the funds still owed by Mr. Kindrachuk at that time.

⁶ Unlike the reporting of the restitution obligation, the option of amendment is available here because it is specifically provided for in the regulation and because it was not a committee obligation to otherwise report vendor credits and deposit refunds until they were actually paid.

⁷ An example of calculating this amount under either method would be as follows: If the Committee had incurred unpaid obligations of \$5,000 by November 30, 1989, the amount would be reduced to \$29,979.12. If Mr. Ritter or another person has already converted another \$5,000 to personal use since that date, then the permissible amount would be further reduced to \$24,979.12.

