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AOR 1997-22

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REC'D
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

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

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 that confirms that BCA may (i) communicate with its members regarding candidates for federal office and (ii) recommend that its members forward BCA's partisan communications to their respective restricted classes.

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") that 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. A copy of BCA's bylaws are attached hereto as Exhibit A.

3. Membership of BCA

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 over 4,500 corporations, over 300 professional organizations, over 70 chambers of commerce, over 35 business or trade associations and over 20 individuals.¹

4. Status of BCA

BCA is an incorporated membership organization for purposes of the Act, as determined by the FEC in Advisory Opinion 1996-21.

B. 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 in favor 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.² Of course, no corporate contributions could or would be sought. In the case of corporate members, BCA communicates with the individual contract person through whom BCA normally communicates with the corporate member. *See Adv. Op. 1996-21.* Where a member is an unincorporated organization or trade association, BCA proposes to similarly communicate with

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

²BCA would like to encourage recipients of its communications 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.

the individual contact person through whom BCA normally communicates with the organization or association member.

BCA proposes to produce candidate endorsements at BCA's expense, which communications would constitute the views of BCA rather than a distribution or reproduction of materials prepared by any candidate or other entity. BCA would provide these partisan communications to its members and request that the members forward these communications to their respective restricted classes. While the members would not be obligated to comply with BCA's request, BCA anticipates many members will cooperate. Thus, for example, BCA's corporate members would provide BCA's partisan communications to their stockholders, many of whom may be employees of such corporations. Similarly, BCA's organization and association members would provide BCA's partisan communications to their members.

Briefly stated, BCA's question is two-fold: First, may BCA communicate its endorsement and encourage individual contributions to the endorsed candidate through communications with the "contact person" of its association and organization members through whom BCA normally communicates? Second, may BCA request that its members -- particularly corporations and associations -- forward the partisan communications to members of their restricted classes?

C. Discussion

1. Communications with Association and Organization Members

In a recent advisory opinion, the Federal Election Commission (the "Commission") acknowledged BCA's right, as a membership organization, to communicate with its members and allowed BCA to send partisan communications to the representatives or "contact persons" of its corporate members. *See* Adv. Op. 1996-21. The Commission looked to the regulations, which specifically allow trade associations to communicate with corporate members' representatives, but are silent as to how membership organizations are to communicate with their corporate members. *See* 11 C.F.R. § 114.8(h). The Commission concluded that like a trade association, a membership organization may communicate with its corporate members' representatives.

The regulations do not address how a membership organization may communicate with its unincorporated association and organization members. Thus, although the Act specifically allows a membership organization to communicate with its members, the Act does not address the method by which a membership organization may communicate with its unincorporated trade association and organization members. *See* 2 U.S.C. § 431(9)(B)(iii).

BCA submits that the Commission should draw an analogy between communications with corporate members and communications with association or organization members. BCA's member associations and organizations each designate one or two contact persons. By informing the contact person and, hence, the members of various candidates' positions on business issues and encouraging these individuals to support candidates endorsed by BCA, BCA would be

exercising its First Amendment right to communicate with all its members. Thus, BCA should be permitted to contact the member associations' and organizations' representative(s) with whom it normally communicates or transacts its business to discuss its analysis and endorsement of federal candidates.

2. **Request That Members Forward BCA's
Partisan Communication to Their Members**

BCA seeks to create written partisan communications (which will comply with all relevant regulations, including 11 U.S.C. § 114.2(f), 114.3, 100.8(b)(4) and 104.6) to send to its members (through the members' contact persons) with the request that such communications be distributed to the members' restricted classes.

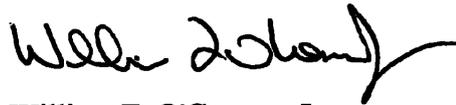
The Act limits the audience to whom an entity may make partisan communications. Generally, corporations, incorporated membership organizations and incorporated trade associations may make any communications on any subject, including communications expressing support for or opposition to federal political candidates, to their restricted class or any part of that class. 11 C.F.R. §§ 114.3(a)(1), 114.3(a)(2), 114.1(j). BCA, as a membership organization, may communicate on any subject with its restricted class, which consists of members and executive personnel and their families. 11 U.S.C. § 114.1(j). BCA's association and organization members may similarly communicate with their members, executive personnel and families. 11 U.S.C. § 114.1(j). The Act authorizes BCA's corporate members to communicate with their respective restricted classes, which are comprised of, *inter alia*, (i) executive and administrative personnel of the corporation and (ii) stockholders of the corporation and their families. 11 U.S.C. § 114.1(j). In many instances, the corporations' employees will be stockholders (as defined in 11 U.S.C. § 114.1(h) and so may receive unlimited partisan communications from the corporation.

BCA would like to provide partisan political communications to its corporate and organization members' representatives and ask that they distribute BCA's literature to their respective restricted classes. We believe that nothing in the Act prohibits this activity. In fact, although there is no advisory opinion directly on point, in one publication, the Commission explained that trade associations may "request that members distribute the [partisan] communications to their own restricted class." Federal Election Commission, *Campaign Guide for Corporations and Labor Organization*, 45, n.1 (March 1994). Because the Commission treats membership organizations like trade associations for purposes of determining permissible communications with corporate members (*see* Adv. Op. 1996-21), the Commission's authorization for a trade association to indirectly contact its members' employees would seem to apply with full force to membership organizations. Thus, it follows that BCA should be authorized to provide endorsements to its corporate, association and organization contact persons and request that they disseminate the partisan communication to the restricted classes. The contact persons would remain free to ignore BCA's request and discard BCA's literature, or to comply with its request and distribute the partisan communication.

D. Conclusion

BCA requests that the Commission issue an advisory opinion confirming that it may communicate with its unincorporated association and organization members through their one or two contact persons. BCA further requests that the Commission authorize BCA to submit partisan political communications to its corporation, association and organization members' contact persons and ask such representatives to distribute BCA's communications to their respective restricted classes.

Very truly yours,

A handwritten signature in black ink, appearing to read "William F. O'Connor, Jr.", with a long, sweeping flourish extending to the right.

William F. O'Connor, Jr.
President
Business Council of Alabama

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 engaging 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 members 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 beheld in the State of Alabama. The annual meeting of the members shall be on the second Thursday in October in Birmingham at 12:00 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.

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 three years in such manner that the term of one-third of the authorized Directors will expire each year. The Board may also authorize two year terms at its discretion. 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.