



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Elliott Johnson
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FEDERAL ELECTION COMMISSION
SECRETARY

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MEMORANDUM

March 6, 1998

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

AGENDA ITEM
For Meeting of: 3-12-98

SUBMITTED LATE

SUBJECT: Alternative Drafts for AOR 1997-24

At the Open Session on February 26, 1998, the Commission considered Draft Advisory Opinion 1997-24, as presented in Agenda Document #98-18, which addressed the question of the conversion of a separate segregated fund ("SSF") into a non-connected committee because of the cessation of the connected organization's existence. At that meeting, the Commission directed the Office of General Counsel to draft two alternative proposed opinions reflecting the approaches of Commissioner Elliott and Commissioner Thomas respectively. The alternative drafts are attached.

Alternative A reflects the approach of Commissioner Elliott that a new non-connected committee, affiliated with the SSF, would be established just before the SSF's termination. Alternative B reflects the approach of Commissioner Thomas that the SSF could convert to a non-connected committee after the corporate cessation, with certain temporary restrictions on the activities of the committee. Where the alternative drafts differ from Agenda Document #98-18, the text is marked in bold.

This office requests that the attached alternative drafts be placed on the Open Session Agenda for March 12, 1998.

Attachments

Alternatives A and B

A

DRAFT

1 **ADVISORY OPINION 1997-24**
2
3 **Gerald H. Flamm, M.D., Treasurer**
4 **Corporation for the Advancement of Psychiatry**
5 **Political Action Committee**
6 **1400 K Street, N.W.**
7 **Washington, D.C. 20005**

8
9 **Dear Dr. Flamm:**

10
11 **This responds to your letter dated October 21, 1997, as supplemented by your**
12 **letter dated January 15, 1998, on behalf of the Corporation for the Advancement of**
13 **Psychiatry ("CAP"), requesting an advisory opinion concerning the application of the**
14 **Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission**
15 **regulations to the conversion of its separate segregated fund into a non-connected**
16 **committee.**

17 **CAP is a non-stock corporation exempt from taxation under 26 U.S.C. §501(c)(6).**
18 **It was incorporated in the District of Columbia in 1981 "to promote social justice and**
19 **further human welfare through the advancement of psychiatry and to represent the**
20 **interests of psychiatry before legislative and other government bodies." Shortly after its**
21 **incorporation, CAP established a separate segregated fund, the Corporation for the**
22 **Advancement of Psychiatry Political Action Committee ("CAPPAC").¹ CAPPAC**
23 **solicits contributions from the approximately 4,500 dues paying members of CAP.**

24 **For various reasons, the board of directors of CAP is considering the dissolution**
25 **of CAP and the termination of its existence.² However, various individuals, most of**
26 **whom are CAP members, hope to continue to operate CAPPAC as a non-connected**
27 **political committee. CAPPAC proposes to take the following steps upon CAP's**
28 **dissolution. First, CAPPAC would amend its bylaws to conform to its new status. For**
29 **example, the bylaws would indicate that CAPPAC is no longer the separate segregated**
30 **fund ("SSF") of CAP, but rather a non-connected political committee, and that the**

¹ CAPPAC filed its statement of organization with the Commission on December 14, 1981.
² You note that "[i]t has become increasingly difficult for small interest groups, such as CAP, to effectively compete for members with the larger mental health organizations and therefore, from a business perspective, dissolution appears to be an appropriate action."

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1 individuals who contribute to CAPPAC would be deemed voting members of the PAC
2 and entitled to participate in its governance. Second, CAPPAC would move its offices to
3 a new location, and the CAP employee who administered the PAC would become an
4 employee of the PAC. Third, the PAC would solicit contributions from a broad range of
5 individuals. According to CAPPAC's 1997 year end report, it had \$80,715 in cash on
6 hand as of December 31, 1997.³

7 In view of the plans of CAP and CAPPAC, you ask four questions, which have
8 been re-ordered as follows:

- 9 (1) Upon CAP's termination, may CAPPAC continue in existence as a non-connected
10 political committee by amending its statement of organization to indicate its new status?
11
12 (2) If CAPPAC may continue its existence as a non-connected committee following the
13 corporate termination, may it retain the funds contributed to CAPPAC prior to the
14 corporate termination and use those funds to make contributions and expenditures?
15
16 (3) If CAPPAC may continue its existence as a non-connected committee following the
17 corporate termination, may it purchase from CAP at fair market value the mailing lists,
18 personal computer and other equipment that are currently used for PAC administration?
19
20 (4) If CAPPAC may continue in existence as a non-connected political committee
21 following the corporate termination, may it continue to use the name CAPPAC?
22

23 In order to respond to your questions, it is necessary to examine the relationship
24 of a separate segregated fund to its connected organization. The Act and Commission
25 regulations prohibit a corporation from making a contribution in connection with a
26 Federal election. 2 U.S.C. §441b(a); 11 CFR 114.2(b). An exception to the definition of
27 corporate contribution permits a corporation to expend funds to establish, administer, and
28 solicit contributions to a separate segregated fund to be utilized for political purposes and
29 composed of voluntary contributions that were solicited from an eligible group of
30 personnel as defined by the Act. 2 U.S.C. §441b(b)(2)(C), 441b(b)(3) and 441b(b)(4); 11
31 CFR 114.1(a)(2)(iii) and 114.5(a). Commission regulations further make clear that

³ For the purposes of this opinion, the Commission accepts your representation that CAP is not an affiliate of the American Psychiatric Association or the Washington Psychiatric Society. The Commission also assumes that CAP is not an affiliate of any other incorporated entity. Therefore, there will be no surviving corporation that can continue or attain the status of a connected organization for CAPPAC. See 2 U.S.C. §431(7); 11 CFR 100.6(a) and 110.3(a); see also Advisory Opinions 1996-26 and 1983-19.

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1 corporations, including membership organizations, may use general treasury moneys,
2 including moneys obtained in commercial transactions and dues moneys or membership
3 fees, for SSF establishment, administration, and solicitation costs, and that the
4 corporation "may exercise control over" its SSF. 11 CFR 114.5(b) and (d).

5 The nature of the relationship between an SSF and its connected organization has
6 been discussed by the United States Supreme Court. It has held that an SSF must be
7 separate from its connected organization "only in the sense that there must be a strict
8 segregation of its moneys from" general treasury funds. *Pipefitters Local Union No. 562*
9 *v. United States*, 407 U.S. 385, 414 (1972). The Court stated that, in view of a
10 sponsoring entity's ability to establish, administer, and solicit contributions to the SSF,
11 "it is difficult to conceive how a valid political fund can be meaningfully 'separate' from
12 [the sponsoring entity] in any way other than 'segregated'." 407 U.S. at 426. In *Bread*
13 *Political Action Committee v. Federal Election Commission*, the Court of Appeals for the
14 Seventh Circuit, citing *Pipefitters*, stated that "the separate segregated funds are simply
15 political arms of the parent organizations." 635 F.2d 621, 624, n.3 (7th Cir. 1980) (en
16 banc), *rev'd on jurisdictional grounds*, 455 U.S. 577 (1982).

17 You state that CAP will dissolve and terminate. Under the law of the District of
18 Columbia, the membership of a non-profit corporation that voluntarily seeks to
19 terminate its existence adopts a board-recommended resolution that the corporation be
20 dissolved and then the corporation ceases to conduct its affairs, except insofar as is
21 necessary "for winding up." D.C. Code §29-548. The dissolution process includes
22 satisfying the corporation's liabilities and obligations and disposing of its assets. D.C.
23 Code §29-549. When the satisfaction of liabilities and obligations and the disposition of
24 assets have been completed, the corporation files articles of dissolution with the Mayor
25 and the existence of the corporation ceases upon the Mayor's issuance of a certificate of
26 dissolution. D.C. Code §§29-552 and 29-553. In view of the fact that the SSF is a part of
27 the corporation (with merely its funds segregated), the SSF may no longer exist upon the
28 cessation of the connected organization's existence. Hence, at that point (i.e., on the
29 date of the issuance of a certificate of dissolution) or before, CAPPAC should file a

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1 termination report with the Commission and terminate its existence.⁴ See 2 U.S.C.
2 §433(d)(1); 11 CFR 102.3(a)(1).

3 **According to your request, however, certain members of CAP and other**
4 **persons wish to continue to operate a political committee, presumably with the same**
5 **objectives of CAPPAC. Absent other circumstances, a committee formed as a non-**
6 **connected committee could not lawfully use the funds raised by an SSF, because**
7 **such funds were raised under a statutory exemption from the general definition of**
8 **“contribution” that allows a connected organization to pay the SSF’s establishment,**
9 **administration, and solicitation costs. 2 U.S.C. §441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii).**
10 **Normally, to permit a non-connected committee to retain those funds to make its own**
11 **contributions to candidates or other political committees would be contrary to the**
12 **statutory scheme that regards as contributions the costs of supporting a political**
13 **committee that is not entitled to the exemption. See *California Medical Association v.***
14 ***Federal Election Commission*, 453 U.S. 182, 198-201 (1982); see also Advisory Opinion**
15 **1982-63. However, under the circumstances you present, there is a way for a new**
16 **committee to be formed that would permit it to use the contributions raised by**
17 **CAPPAC.**

18 **During the dissolution process, or just prior to the cessation of CAP and**
19 **CAPPAC, the persons who wish to form a non-connected committee may create one.**
20 **The Act and Commission regulations provide that committees that are established,**
21 **financed, maintained or controlled by the same corporation, person, or group of**
22 **persons, including any parent, subsidiary, branch, division, department, or local**
23 **unit thereof, are affiliated. 2 U.S.C. §441a(a)(5); 11 CFR 100.5(g)(2). In view of the**
24 **fact that the new committee will be created and administered largely by persons**
25 **who administered or were associated with CAPPAC and in view of the fact that it**

⁴ The only exception to the necessity for termination would be if there were still outstanding debts owed by the SSF. However, CAPPAC (according to its 1997 year end report) has no outstanding debts or obligations owed by it.

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1 will be, in effect, a successor entity to CAPPAC, the new committee will be affiliated
2 with CAPPAC. See 11 CFR 110.3(a)(3)(ii)(E), (F), and (I).⁵

3 Contributions made to or by affiliated committees shall be considered to
4 have been made to or by a single committee. 2 U.S.C. §441a(a)(5); 11 CFR
5 100.5(g)(2), 110.3(a)(1), and 110.3(a)(1)(ii). Therefore, transfers between affiliated
6 committees are not limited by 2 U.S.C. §441a. 11 CFR 102.6(a)(1). Consequently,
7 CAPPAC may transfer all of its cash on hand to the new committee, provided that it
8 is created prior to the termination of CAPPAC.

9 There are further consequences to the affiliated relationship, however. In
10 view of the fact that contributions made to or by affiliated committees are
11 considered to have been made by one committee, the contributions made and
12 received by the new committee must be aggregated with the contributions that have
13 been made and received by CAPPAC. Thus, for example, assuming that the events
14 described in this opinion will occur only during 1998, contributions made by the
15 new committee with respect to any 1998 elections may not, when aggregated with
16 contributions made by CAPPAC for those elections, exceed the \$5,000 per election
17 limits of 2 U.S.C. §441a(a)(2)(A).⁶ In addition, an individual's contributions to the
18 two committees in 1998 must when aggregated, fall within the \$5,000 yearly limit set
19 out in 2 U.S.C. §441a(a)(1)(C).

⁵ Commission regulations provide for an examination of various factors in the context of an overall relationship to determine whether committees are affiliated. 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J). Factors (E), (F), and (I) are as follows: (E) whether a sponsoring organization or committee has common or overlapping officers or employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the organizations or committees; (F) whether a sponsoring organization or committee has any members, officers, or employees who were members, officers, or employees of another sponsoring organization or committee which indicates a formal or ongoing relationship or the creation of a successor entity; and (I) whether a sponsoring organization or a committee or its agent had an active or significant role in the formation of another sponsoring organization or committee. 11 CFR 110.3(a)(3)(ii)(E), (F), and (I).

⁶ The Commission has held that, since affiliated committees share a single contribution limit and may make unlimited transfers among themselves, a committee that becomes affiliated with a pre-existing multicandidate committee qualifies for treatment as a multicandidate committee. Advisory Opinion 1997-25. Hence, the limit for the aggregated contributions is the \$5,000 per election limit for multicandidate committees, not the \$1,000 per election limit at 2 U.S.C. §441a(a)(1)(A).

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1 **The third question implicates the issue of affiliation and its effect upon a**
2 **connected organization's relationship to political committees. Usually, when a**
3 **political committee is purportedly established as a non-connected committee but is**
4 **affiliated with an SSF, the "non-connected" committee may receive establishment,**
5 **administration, and solicitation support from the connected organization of the SSF.**
6 **See Advisory Opinions 1996-38; see also Advisory Opinions 1997-13 and 1992-17.**
7 **However, you have presented a situation that involves a critical factual distinction**
8 **from the usual situation. The connected organization in this instance will cease to**
9 **exist in the near future; in fact, the request was submitted because of this**
10 **impending development. At the corporation's cessation, the new committee will**
11 **function as a non-connected committee with no connected organization and no**
12 **restriction on the group of persons who may be solicited for contributions.**

13 **In view of these circumstances, the Commission concludes that the new**
14 **committee may not avail itself of the contribution exception at 2 U.S.C.**
15 **§441b(b)(2)(C), either directly or indirectly, for the purpose of obtaining the mailing**
16 **lists, personal computer, and other equipment that CAP has used to administer**
17 **CAPPAC.⁷ The new committee may not accept a donation of these items from CAP**
18 **or from CAPPAC, which itself may not accept such a donation from CAP and then**
19 **transfer the items to the new committee. The new committee may, however,**
20 **purchase the items from CAP as long as it pays the usual and normal charge for**
21 **such goods. See 11 CFR 100.7(a)(1)(iii)(A) and (B). This purchase may be made**
22 **from the cash on hand transferred to it by CAPPAC and, obviously, must be done**
23 **before the cessation of CAP.**

24 **As to the fourth question, the Commission notes that the Act and Commission**
25 **regulations require an SSF to include in its name the full name of the connected**
26 **organization. 2 U.S.C. §432(e)(5); 11 CFR 102.14(c). The Act or regulations do not**
27 **explicitly prohibit a non-connected committee from including the name of a corporation**
28 **in its name, but the use of a corporate name may constitute a prohibited corporate**

⁷ In addition, CAP may not provide any other financial support to the new committee. See Advisory Opinion 1997-15.

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1 contribution to the new committee. In view of the impending cessation of CAP and the
2 brief and transitional nature of the co-existence of CAP and the new committee,
3 however, the Commission concludes that the new committee may take the name used by
4 the terminated SSF. Other Federal statutes governing the use of trademarks or trade
5 names may apply. During the brief period in which CAPPAC and the new
6 committee co-exist, the new committee should have a name that differs from
7 CAPPAC by at least one word or numeric designation; for example, CAPPAC '98.
8 However, the new committee may take the same exact CAPPAC name after the
9 termination of the old PAC. Any such name change must be reported on an
10 amended statement of organization. 2 U.S.C. §433(c); 11 CFR 102.2(a)(2).

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

14 Sincerely,

15
16 Joan D. Aikens
17 Chairman

18
19 Enclosures (AOs 1997-25, 1997-15, 1997-13, 1996-38, 1996-26, 1992-17, 1983-19, and
20 1982-63)

21
22
23

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DRAFT

1 ADVISORY OPINION 1997-24
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3 Gerald H. Flamm, M.D., Treasurer
4 Corporation for the Advancement of Psychiatry
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18 It was incorporated in the District of Columbia in 1981 "to promote social justice and
19 further human welfare through the advancement of psychiatry and to represent the
20 interests of psychiatry before legislative and other government bodies." Shortly after its
21 incorporation, CAP established a separate segregated fund, the Corporation for the
22 Advancement of Psychiatry Political Action Committee ("CAPPAC").¹ CAPPAC
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24 For various reasons, the board of directors of CAP is considering the dissolution
25 of CAP and the termination of its existence.² However, various individuals, most of
26 whom are CAP members, hope to continue to operate CAPPAC as a non-connected
27 political committee. CAPPAC proposes to take the following steps upon CAP's
28 dissolution. First, CAPPAC would amend its bylaws to conform to its new status. For
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³ For the purposes of this opinion, the Commission accepts your representation that CAP is not an affiliate of the American Psychiatric Association or the Washington Psychiatric Society. The Commission also assumes that CAP is not an affiliate of any other incorporated entity. Therefore, there will be no surviving corporation that can continue or attain the status of a connected organization for CAPPAC. See 2 U.S.C. §431(7); 11 CFR 100.6(a) and 110.3(a); see also Advisory Opinions 1996-26 and 1983-19.

B

1 corporations, including membership organizations, may use general treasury moneys,
2 including moneys obtained in commercial transactions and dues moneys or membership
3 fees, for SSF establishment, administration, and solicitation costs, and that the
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7 separate from its connected organization "only in the sense that there must be a strict
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18 Columbia, the membership of a non-profit corporation that voluntarily seeks to
19 terminate its existence adopts a board-recommended resolution that the corporation be
20 dissolved and then the corporation ceases to conduct its affairs, except insofar as is
21 necessary "for winding up." D.C. Code §29-548. The dissolution process includes
22 satisfying the corporation's liabilities and obligations and disposing of its assets. D.C.
23 Code §29-549. When the satisfaction of liabilities and obligations and the disposition of
24 assets have been completed, the corporation files articles of dissolution with the Mayor
25 and the existence of the corporation ceases upon the Mayor's issuance of a certificate of
26 dissolution. D.C. Code §§29-552 and 29-553. In view of the fact that the SSF is a part of
27 the corporation (with merely its funds segregated), a political committee may no longer
28 exist as an SSF upon the cessation of the connected organization's existence. Moreover,
29 from a functional standpoint under the Act, there would be no connected
30 organization and no definable restricted class for the receipt of solicitations.

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1 However, under the conditions set out below, CAPPAC may continue to exist as a
2 non-connected political committee after the cessation of CAP.

3 The continuing existence of the committee raises the issue of using the funds
4 on hand at the time of its conversion from an SSF. Such funds were raised under a
5 statutory exemption from the general definition of "contribution" that allows a connected
6 organization to pay the SSF's establishment, administration, and solicitation costs. 2
7 U.S.C. §441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii). Normally, to permit a non-connected
8 committee to retain those funds to make its own contributions to candidates or other
9 political committees would be contrary to the statutory scheme that regards as
10 contributions the costs of supporting a political committee that is not entitled to the
11 exemption. See *California Medical Association v. Federal Election Commission*, 453
12 U.S. 182, 198-201 (1982); see also Advisory Opinion 1982-63. However, in the
13 circumstances presented here, if the committee continues to operate under the Act's
14 restrictions on the activity of an SSF, then the underlying policy of the statute can be
15 preserved. Specifically, the Commission requires, in this instance, that CAPPAC
16 may not make contribution solicitations beyond the group of persons that
17 constituted CAP's restricted class until the PAC has disbursed all of the funds that
18 comprised its cash on hand at the time of the cessation of the corporation's
19 existence, i.e., the issuance of a certificate of dissolution under the D.C. Code. See
20 D.C. Code §29-553. This restricted class would be CAP's executive and
21 administrative personnel, members, and the families of such persons on the date just
22 before the corporation's cessation. See 2 U.S.C. §441b(b)(4)(A) and (C); 11 CFR
23 114.7(a).⁴

⁴ If CAP is not able to ascertain its membership on the date next preceding the issuance of the dissolution certificate, it may consider the relevant membership to be those persons who were members at a recent significant date, such as on the date of the membership vote to approve a plan of dissolution which occurs after the approval by the members of a resolution to dissolve the corporation (see D.C. Code §29-550) or, if no such vote is necessary, on the date of the approval by the members of the resolution to dissolve (which commences the dissolution process). See D.C. Code §29-549. As indicated above, after the members' approval of a dissolution resolution, the corporation ceases to conduct its affairs except insofar as is necessary for "winding up." D.C. Code §29-548.

distribution of assets

B

1 CAPPAC has a number of options as to how to distribute these funds. In
2 discussing disbursements by political committees that were not the authorized
3 committees of a Federal candidate, the Commission has noted that the rules of 2 U.S.C.
4 §439a and 11 CFR 113.2 do not apply, and that such a committee may expend its funds
5 for any lawful purpose consistent with the Act and Commission regulations. Advisory
6 Opinions 1992-10, 1991-21, and 1986-32. Accordingly, CAPPAC may contribute its
7 funds to other political committees, such as authorized candidate committees, political
8 party committees, or non-connected political committees, subject to the limits of the Act.⁵
9 CAPPAC may also donate the funds to CAP before CAP's termination, if permissible
10 under other applicable law. Advisory Opinion 1986-32.⁶

to selection
of candidates

11 Because of its continuing existence as a political committee, CAPPAC,
12 although no longer an SSF, will not have new limits for the receipt and
13 disbursement of contributions. Any contributions received or made by CAPPAC
14 after CAP's cessation must be aggregated with those received or made before that
15 event. Thus, for example, assuming that CAP will cease to exist in 1998,
16 contributions made by CAPPAC with respect to any 1998 elections before CAP's
17 cessation may not, when aggregated with contributions made by CAPPAC after the
18 cessation, exceed the \$5,000 per election limits of 2 U.S.C. §441a(a)(2)(A).⁷ In
19 addition, an individual's contributions to CAPPAC in 1998 after the corporate

⁵ Presumably, CAPPAC would not make contributions to other SSFs because it would not be solicitable by them or their connected organizations (although it may make unsolicited contributions to such committees). 11 CFR 114.5(g), 114.5(j).

⁶ Although the only purpose for doing so would be to disburse its cash on hand as quickly as possible (if CAPPAC wanted to solicit beyond the restricted class sooner rather than later), CAPPAC may also refund the contributions on hand to the persons who made them, such as on a last contributed, first refunded basis. See Advisory Opinions 1991-21 and 1986-32.

⁷ CAPPAC will not lose its multicandidate committee status merely because it becomes a different type of political committee. It is still a political committee that has been registered for at least six months, has received contributions from more than 50 persons, and has contributed to at least five candidates. 2 U.S.C. §441a(a)(4); 11 CFR 100.5(c)(3). See, by analogy, Advisory Opinions 1993-22 and 1985-30 (where the Commission has stated that, in order to qualify for multicandidate committee status, a principal campaign committee of a retiring Member of Congress could avail itself of the length of time of its prior registration, the number of contributions it received, and the number of candidates to which it contributed).

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1 cessation must, when aggregated his 1998 contributions to CAPPAC before the
2 cessation, fall within the \$5,000 yearly limit set out in 2 U.S.C. §441a(a)(1)(C).⁸

3 With respect to your third question, the Commission notes that, normally, a
4 corporate connected organization may donate equipment and mailing lists to its SSF
5 under the exception at 2 U.S.C. §441b(b)(2)(C), and, thus, CAP would be able to
6 give these items to CAPPAC before the corporate cessation. However, you have
7 presented a situation that involves a critical factual distinction from the normal
8 circumstances. The connected organization in your situation will cease to exist in
9 the near future; in fact, the request was submitted because of this impending
10 development. At the corporation's cessation, the new committee will function as a
11 non-connected committee with no connected organization. Moreover, once it has
12 disbursed the cash that was on hand at the time of the corporate cessation, it will
13 have no restriction on the group of persons who may be solicited for contributions.
14 In view of the fact that the equipment and mailing lists will be used for the
15 functioning of CAPPAC as a non-connected committee, the Commission concludes
16 that CAP may not donate them to CAPPAC. CAPPAC may, however, purchase the
17 items from CAP as long as it pays the usual and normal charge for such goods. See
18 11 CFR 100.7(a)(1)(iii)(A) and (B). [This purchase may be made from the cash on
19 hand transferred to it by CAPPAC and, obviously, must occur before the cessation
20 of CAP.]

21 As to the fourth question, the Commission notes that the Act and Commission
22 regulations require an SSF to include in its name the full name of the connected
23 organization. 2 U.S.C. §432(e)(5); 11 CFR 102.14(c). The Act or regulations do not
24 explicitly prohibit a non-connected committee from including the name of a corporation
25 in its name, but the use of a corporate name may constitute a prohibited corporate
26 contribution to the new committee. In view of the fact that CAP will have ceased to

⁸ If CAPPAC refunds contributions in the process of disbursing the cash on hand at the time of the corporate cessation (see footnote 6), then CAPPAC need not aggregate a contributor's post-cessation 1998 contributions with his pre-cessation 1998 contributions that are refunded.

1 point or before, CAPPAC should file a termination report with the Commission and
2 terminate its existence.⁴ See 2 U.S.C. §433(d)(1); 11 CFR 102.3(a)(1)

3 **If the CAP members and the other individuals referred to above wish to form**
4 **a new non-connected committee during the dissolution process, that new committee**
5 **may not receive or expend CAPPAC's cash on hand. Those funds were raised under a**
6 **statutory exemption from the general definition of "contribution" that allowed CAP to**
7 **pay the committee's establishment, administration, and solicitation costs. 2 U.S.C.**
8 **§441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii). Therefore, to permit the proposed non-**
9 **connected committee to retain those funds to make its own contributions to candidates or**
10 **other political committees would be contrary to the statutory scheme that regards as**
11 **contributions the costs of supporting a political committee that is not entitled to the**
12 **exemption. See *California Medical Association v. Federal Election Commission*, 453**
13 **U.S. 182, 198-201 (1982); see also Advisory Opinion 1982-63. Even though the cash on**
14 **hand was raised from a restricted class, such funds were raised with the use of corporate**
15 **moneys. To then allow a non-connected committee to avail itself of these funds for**
16 **administrative or other purposes, such as soliciting more contributions, would contravene**
17 **the purposes of 2 U.S.C. §441b.**

18 In order to terminate, CAPPAC has a number of options as to how to distribute its
19 funds. **In past opinions discussing disbursements by political committees that were**
20 **not the authorized committees of a Federal candidate, the Commission has noted that the**
21 **rules of 2 U.S.C. §439a and 11 CFR 113.2 do not apply, and that such a committee may**
22 **expend its funds for any lawful purpose consistent with the Act and Commission**
23 **regulations. Advisory Opinions 1992-10, 1991-21, and 1986-32. Accordingly,**
24 **CAPPAC may contribute its remaining funds to other political committees, such as**
25 **authorized candidate committees, political party committees, or non-connected political**
26 **committees, subject to the limits of the Act.⁵ CAPPAC may also donate the funds to**

⁴ The only exception to the necessity for termination would be if there were still outstanding debts owed by the SSF. However, CAPPAC (according to its 1997 year end report) has no outstanding debts or obligations owed by it.

⁵ Presumably, CAPPAC would not make contributions to other SSFs because it would not be solicitable by them or their connected organizations (although it may make unsolicited contributions to such committees). 11 CFR 114.5(g), 114.5(j).

1 CAP before CAP's termination, if permissible under other applicable law. Advisory
2 Opinion 1986-32. It may also refund the contributions on hand to the persons who made
3 them, such as on a *pro rata* basis or on a last contributed, first refunded basis. See
4 Advisory Opinions 1991-21 and 1986-32.

5 **This opinion does not reach any issues related to the aggregation of**
6 **contributions made or received by a new non-connected committee, or related to**
7 **solicitations for contributions to the new committee. You have not described the**
8 **manner in which such contributions would be solicited, whether CAPPAC proposes**
9 **to make solicitations for contributions to the new committee, or how the new**
10 **committee will finance any future contribution solicitations. Moreover, the**
11 **formation of a new committee by persons associated with CAPPAC is hypothetical**
12 **at this time because three of your questions are predicated on the legality of**
13 **CAPPAC's conversion to a non-connected committee. As already discussed, such a**
14 **conversion is prohibited.**

15 **In order to answer question 3 specifically, however, the Commission assumes**
16 **the formation of a new committee. The new committee may be established while CAP**
17 **is engaged in dissolution, but not until after the termination of CAPPAC. The**
18 **Commission anticipates that CAP will cease to exist within a brief period after the**
19 **formation of the new committee.⁶ The new committee may purchase from CAP the**
20 **mailing lists, personal computer, and other equipment that are currently used for**
21 **CAPPAC administration as long as it pays the usual and normal charge for such goods.**
22 **See 11 CFR 100.7(a)(1)(iii)(A) and (B). This purchase will have to be made from**
23 **contributions raised by the new committee itself, e.g., from contributions by the**
24 **committee's organizers that otherwise comply with the Act.**

25 **As to the fourth question, the Commission notes that the Act and Commission**
26 **regulations require an SSF to include in its name the full name of the connected**

⁶ In view of the impending cessation of CAP's existence, the brief and transitional nature of the co-existence of CAP and the new committee, and the above-stated representation and assumption that CAP does not have any corporate affiliates (see footnote 3), the Commission will not address the governance aspect of the new committee's non-connected nature under the standards set out in Advisory Opinions 1997-26, 1997-15, and 1984-12. The Commission assumes, however, that CAP will provide no financial support to the new committee, as defined in Advisory Opinion 1997-15.

1 organization. 2 U.S.C. §432(e)(5); 11 CFR 102.14(c). The Act or regulations do not
2 explicitly prohibit a non-connected committee from including the name of a corporation
3 in its name, but the use of a corporate name may constitute a prohibited corporate
4 contribution to the new committee. In view of the impending cessation of CAP's
5 existence (see footnote 6), however, the Commission concludes that the new committee
6 may take the name used by the terminated SSF. Other Federal statutes governing the use
7 of trademarks or trade names may apply.

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

11 Sincerely,

12
13 Joan D. Aikens
14 Chairman

15
16 Enclosures (AOs 1997-26, 1997-15, 1996-26, 1992-10, 1991-21, 1986-32, 1984-12,
17 1983-19, and 1982-63)
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1 exist, however, the Commission concludes that CAPPAC may retain its name. Other
2 Federal statutes governing the use of trademarks or trade names may apply.

3 The Commission notes that, within ten days of the cessation of CAP's
4 existence, CAPPAC must file an amended statement of organization with the
5 Commission indicating that CAP is no longer its connected organization and that it
6 is no longer a separate segregated fund. 2 U.S.C. §433(b)(2) and (c); 11 CFR
7 102.2(a)(2) and (b).

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

11 Sincerely,

12
13 Joan D. Aikens
14 Chairman

15
16 Enclosures (AOs 1996-26, 1993-22, 1992-10, 1991-37, 1991-21, 1986-32,
17 1985-30, 1983-19, and 1982-63)
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