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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

July 23, 1998

**MEMORANDUM**

**AGENDA ITEM**

For Meeting of: 7-30-98

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 1998-15

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for July 30, 1998.

Attachment

July 23, 1998

**NOTICE AO DRAFT COMMENT PROCEDURES**

The Commission has approved a revision in its advisory opinion procedures that permits the submission of written public comments on draft advisory opinions when proposed by the Office of General Counsel and scheduled for a future Commission agenda.

Today, DRAFT ADVISORY OPINION 1998-15 is available for public comments under this procedure. It was requested by treasurer, R.A. Roggeveen on behalf of Fitzgerald for Senate. The draft may be obtained from the Public Disclosure Division of the Commission.

Proposed Advisory Opinion 1998-15 will be on the Commission's agenda for its public meeting of Thursday July 30, 1998.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00 noon (EDT) on July 29, 1998.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case by case basis in special circumstances.

4) All comments timely received will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Disclosure Division.

## **CONTACTS**

**Press inquiries: Ron Harris (202) 219-4155**

**Commission Secretary: Marjorie Emmons (202) 219-4145**

**Other inquiries:**

**To obtain copy of draft AO 1998-15 contact Public Records Office-  
Public Disclosure Division (202) 219-4140, or 800-424-9530.**

**For questions about comment submission procedure contact  
N. Bradley Litchfield, Associate General Counsel, (202) 219-3690.**

## **ADDRESSES**

**Submit single copy of written comments to:**

**Commission Secretary  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463**

1 ADVISORY OPINION 1998-15

**DRAFT**

2  
3 Richard A. Roggeveen, Treasurer  
4 Fitzgerald for Senate, Inc.  
5 50 N. Brockaway  
6 Suite 4-5  
7 Palatine, IL 60067

8  
9 Dear Mr. Roggeveen:

10  
11 This responds to your letter dated June 30, 1998, on behalf of Fitzgerald for  
12 Senate, Inc. ("the Committee"), requesting an advisory opinion concerning the  
13 application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and  
14 Commission regulations to contributions from Illinois limited liability companies.

15 The Committee is the principal campaign committee of Peter Fitzgerald, the  
16 Republican nominee for the United States Senate in the 1998 general election in Illinois.  
17 The Committee filed its statement of organization with the Commission on February 19,  
18 1997.

19 You ask whether the Committee may receive contributions from Illinois limited  
20 liability companies ("LLCs"). You note that the Commission has already concluded that  
21 LLCs in four jurisdictions may make contributions, and assert that Illinois law is similar  
22 to their laws.

23 Under the Act, the term "person" includes an individual, partnership, committee,  
24 association, corporation, labor organization, or any other organization or group of  
25 persons. 2 U.S.C. §431(11); 11 CFR 100.10. The Act prohibits corporations from  
26 making any contribution or expenditure in connection with a Federal election. 2 U.S.C.  
27 §441b(a); 11 CFR 114.2(b). Contributions by persons whose contributions are not  
28 prohibited by the Act are subject to the limits set out in 2 U.S.C. §441a.<sup>1</sup> More  
29 particularly, contributions by partnerships are permitted, although limited by 2 U.S.C.

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<sup>1</sup> The Act prohibits contributions by several entities: corporations, labor organizations, Federal contractors, and foreign nationals. 2 U.S.C. §§441b, 441c, and 441e; 11 CFR 114.2(b), 115.2, and 110.4(a).

1 §441a(a). Partnership contributions are also attributed proportionately against each  
2 contributing partner's limit for the same candidate and election. 11 CFR 110.1(e).<sup>2</sup>

3 As you indicate, the Commission has addressed the ability of LLCs in Virginia,  
4 the District of Columbia, Pennsylvania, and Missouri to make contributions. Advisory  
5 Opinions 1997-17, 1997-4, 1996-13, and 1995-11. In those opinions, the Commission  
6 concluded that, in view of the fact that the LLC was a type of business entity that was not  
7 corporation or partnership under the statutes of those jurisdictions, it fell instead within  
8 the language "any other organization or group of persons," which is part of the Act's  
9 definition of "person." Hence, as a person, but not a corporation, the LLC was subject to  
10 the Act's contribution limits rather than its prohibitions. In addition, contributions from  
11 the LLC's general operating accounts or treasury would not be attributed to any of its  
12 members. However, the Commission's allowance for contributions by LLCs has been  
13 premised on the assumption that none of the individual members of the LLC are  
14 corporations, Federal contractors, or foreign nationals, i.e. entities prohibited by the Act  
15 from contributing. See 2 U.S.C. §§441b, 441c, and 441e. If any member of the  
16 contributing LLC falls within a category prohibited by the Act from contributing, the  
17 contribution would be impermissible. Advisory Opinion 1997-17; see also Advisory  
18 Opinions 1997-4, 1996-13, and 1995-11.

19 In reviewing the statutes of the four jurisdictions, the Commission noted how the  
20 statutes classified the entities in definitional terms and selection of business name. It also  
21 considered whether the statutes for LLCs and the rules of an entity itself broadly reflected  
22 characteristics that were different from those of a corporation in some instances, or a  
23 partnership in others. For example, the opinions reviewed statutory language defining  
24 LLCs or prohibiting the use of certain terms in an LLC name that might indicate another  
25 form of business. Moreover, the statutes reflected the corporate characteristic of

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<sup>2</sup> A partnership contribution is attributed to each partner in direct proportion to his or her share of the partnership's profits; or by agreement of the partners, as long as only the profits of the partners to whom the contribution is attributed are reduced (or losses increased) and those partners' profits are reduced (or losses increased) by the amount attributed to each of them. 11 CFR 110.1(e)(1) and (2). A corporate partner may not participate in a partnership contribution or accept any attribution of any portion of the contribution through a reduction of its share of partnership profits or an increase of its share of partnership losses. 11 CFR 110.1(e).

1 limitation of liability for all the members of an LLC, along with the lack of other  
2 characteristics generally associated with corporations, i.e., free transferability of interest  
3 and continuity of life. The Commission has also noted how the statutes distinguished  
4 LLCs from partnerships, referring to the personal liability of general partners and the fact  
5 that the laws of the jurisdictions recognized the LLC as a business form distinct from  
6 partnerships. Advisory Opinions 1997-17, 1997-4, 1996-13, and 1995-11. In a recent  
7 opinion, the Commission stated that, even if flexibility in the particular State's law on  
8 LLCs and other business forms may allow LLCs to have more common attributes with  
9 the corporations or partnerships in that State, the LLC was still a separate type of  
10 business entity with its own comprehensive statutory framework. Advisory Opinion  
11 1997-4.

12 Under Illinois law, the LLC is a form of business that is distinct from corporations  
13 and partnerships and has its own comprehensive statutory framework. This framework is  
14 found at Act 180, which is a group of articles entitled "Limited Liability Company Act,"  
15 under Chapter 805 of the Illinois statutes, the chapter covering "Business Organizations."  
16 805 Illinois Compiled Statutes ("ILCS") 180/1-1 to 180/60-1. Under the Illinois statute,  
17 the name of an LLC must contain the term "limited liability company" or "LLC" and may  
18 not contain the terms: "'Corporation,' 'Corp.,' 'Incorporated,' 'Inc.' 'Ltd.' 'Co.'  
19 'Limited Partnership,' or 'L.P.'" 805 ILCS 180/1-10(a)(1) and (4). An Illinois LLC is  
20 given limited liability for all its members as is generally the case with corporations and  
21 generally distinguishable from partnerships, particularly general partnerships. 805 ILCS  
22 180/10-10. The Illinois statute provides for limitations on the transferability of interests.  
23 A member's assignment of his interest does not entitle the assignee to membership or the  
24 attendant membership rights, just the right to receive the transferor's distributions, unless  
25 the transferor gives the membership rights to the transferee with the consent of all the  
26 other members or in accordance with authority described in the operating agreement. 805  
27 ILCS 180/30-5 and 30-10. Lastly, in contrast to the Illinois business corporation law's  
28 explicit statement that a corporation's duration is perpetual (unless otherwise provided in  
29 the articles of incorporation), the Illinois LLC law contains no such presumption. 805  
30 ILCS 5/2.10(d) and 180/5-5. It explicitly provides that the LLC's articles of organization

1 shall state the latest date, if any, or events, if any, upon which the LLC will dissolve. 805  
2 ILCS 180/5-5(6). It also requires dissolution upon a number of events, including events  
3 stated in the operating agreement, the consent of the percentage of members specified in  
4 the operating agreement, and the application of a dissociated member upon entry of a  
5 judicial decree that the LLC failed to purchase the petitioner's distributional interest. 805  
6 ILCS 180/35-1 and 180/35-60(a).

7 Based on the foregoing, the Commission concludes that Illinois LLCs are not  
8 corporations or partnerships. Instead, they fall within the category of "any other  
9 organization or group of persons," and may generally make contributions to the  
10 Committee within the limits of the Act and without dual attribution of the amounts to the  
11 LLC's members. See 2 U.S.C. §§431(11) and 441a(a)(1)(A); 11 CFR 100.10 and  
12 110.1(e). As indicated above, however, the LLC may not contribute if any of its  
13 members are in the Act's prohibited contribution categories. 2 U.S.C. §§441b, 441c, and  
14 441e. Thus, the Committee treasurer has certain obligations upon the receipt of a  
15 contribution from an LLC.

16 Commission regulations provide that a committee treasurer shall be responsible  
17 for examining all contributions for evidence of illegality. 11 CFR 103.3(b).  
18 Contributions that present genuine questions as to whether they were made by entities in  
19 the prohibited categories may be, within ten days of the treasurer's receipt, either  
20 deposited into a campaign depository or returned to the contributor. If the contribution is  
21 deposited, the treasurer must make his best efforts, as defined in the regulation, to  
22 determine the legality of the contribution. 11 CFR 103.3(b)(1). If the contribution  
23 cannot be determined to be legal, the treasurer must refund the contribution within 30  
24 days of the receipt. *Id.* If the contribution is deposited into a campaign depository, it  
25 cannot be used for any disbursements by the committee until the contribution has been  
26 determined to be legal. The committee must either establish a separate account in a  
27 campaign depository for such funds or maintain sufficient funds to make the necessary  
28 refunds. 11 CFR 103.3(b)(4).

29 Therefore, upon receipt of a contribution from an Illinois LLC, the Committee  
30 treasurer should ask the LLC, orally or in writing, whether any of its members fall within

1 the prohibited categories. If the treasurer does not receive written or oral (memorialized  
2 in writing) confirmation from the LLC that none of the LLC's members fall within those  
3 categories, the contribution must be returned in a timely manner under 11 CFR  
4 103.3(b)(1). The Commission has specifically determined not to apply to LLCs the  
5 principle of dual attribution of the amounts of contributions that is applied to  
6 partnerships. Therefore, the LLC cannot provide for an attribution of the contribution to  
7 some of its members only (with a consequent reduction in their profits alone). Compare  
8 11 CFR 110.1(e)(2). Advisory Opinion 1997-17.

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

12 Sincerely,

13  
14  
15  
16 Joan D. Aikens  
17 Chairman  
18

19 Enclosures (AOs 1997-17, 1997-4, 1996-13, and 1995-11)