



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 3, 1998

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1998-15

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

Dear Mr. Roggeveen:

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

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

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

Under the Act, the term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 2 U.S.C. §431(11); 11 CFR 100.10. The Act prohibits corporations from making any contribution or expenditure in connection with a Federal election. 2 U.S.C. §441b(a); 11 CFR 114.2(b). Contributions by persons whose contributions are not

prohibited by the Act are subject to the limits set out in 2 U.S.C. §441a.¹ More particularly, contributions by partnerships are permitted, although limited by 2 U.S.C. §441a(a). Partnership contributions are also attributed proportionately against each contributing partner's limit for the same candidate and election. 11 CFR 110.1(e).²

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

In reviewing the statutes of the four jurisdictions, the Commission noted how the statutes classified the entities in definitional terms and selection of business name. It also considered whether the statutes for LLCs and the rules of an entity itself broadly reflected characteristics that were different from those of a corporation in some instances, or a partnership in others. For example, the opinions reviewed statutory language defining LLCs or prohibiting the use of certain terms in an LLC name that might indicate another form of business. Moreover, the statutes reflected the corporate characteristic of limitation of liability for all the members of an LLC, along with the lack of other characteristics generally associated with corporations, i.e., free transferability of interest and continuity of life. The Commission has also noted how the statutes distinguished LLCs from partnerships, referring to the personal liability of general partners and the fact that the laws of the jurisdictions recognized the LLC as a business form distinct from partnerships. Advisory Opinions 1997-17, 1997-4, 1996-13, and 1995-11. In a recent opinion, the Commission stated that, even if flexibility in the particular State's law on LLCs and other business forms may allow LLCs to have more common

¹ 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).

² 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).

attributes with the corporations or partnerships in that State, the LLC was still a separate type of business entity with its own comprehensive statutory framework. Advisory Opinion 1997-4.

Under Illinois law, the LLC is a form of business that is distinct from corporations and partnerships and has its own comprehensive statutory framework. This framework is found at Act 180, which is a group of articles entitled “Limited Liability Company Act,” under Chapter 805 of the Illinois statutes, the chapter covering “Business Organizations.” 805 Illinois Compiled Statutes (“ILCS”) 180/1-1 to 180/60-1. Under the Illinois statute, the name of an LLC must contain the term “limited liability company” or “LLC” and may not contain the terms: Corporation, Corp., Incorporated, Inc., Ltd., Co., Limited Partnership, or L.P. 805 ILCS 180/1-10(a)(1) and (4). An Illinois LLC is given limited liability for all its members as is generally the case with corporations and generally distinguishable from partnerships, particularly general partnerships. 805 ILCS 180/10-10. The Illinois statute provides for limitations on the transferability of interests. A member’s assignment of his interest does not entitle the assignee to membership or the attendant membership rights, just the right to receive the transferor’s distributions, unless the transferor gives the membership rights to the transferee with the consent of all the other members or in accordance with authority described in the operating agreement. 805 ILCS 180/30-5 and 30-10. Lastly, in contrast to the Illinois business corporation law’s explicit statement that a corporation’s duration is perpetual (unless otherwise provided in the articles of incorporation), the Illinois LLC law contains no such presumption. 805 ILCS 5/2.10(d) and 180/5-5. It explicitly provides that the LLC’s articles of organization shall state the latest date, if any, or events, if any, upon which the LLC will dissolve. 805 ILCS 180/5-5(6). It also requires dissolution upon a number of events, including events stated in the operating agreement, the consent of the percentage of members specified in the operating agreement, and the application of a dissociated member upon entry of a judicial decree that the LLC failed to purchase the petitioner’s distributional interest. 805 ILCS 180/35-1 and 180/35-60(a).

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

Commission regulations provide that a committee treasurer shall be responsible for examining all contributions for evidence of illegality. 11 CFR 103.3(b). Contributions that present genuine questions as to whether they were made by entities in the prohibited categories may be, within ten days of the treasurer’s receipt, either deposited into a campaign depository or returned to the contributor. If the contribution is

deposited, the treasurer must make his best efforts, as defined in the regulation, to determine the legality of the contribution. 11 CFR 103.3(b)(1). If the contribution cannot be determined to be legal, the treasurer must refund the contribution within 30 days of the receipt. *Id.* If the contribution is deposited into a campaign depository, it cannot be used for any disbursements by the committee until the contribution has been determined to be legal. The committee must either establish a separate account in a campaign depository for such funds or maintain sufficient funds to make the necessary refunds. 11 CFR 103.3(b)(4).

Therefore, upon receipt of a contribution from an Illinois LLC, the Committee treasurer should ask the LLC, orally or in writing, whether any of its members fall within the prohibited categories. If the treasurer does not receive written or oral (memorialized in writing) confirmation from the LLC that none of the LLC's members fall within those categories, the contribution must be returned in a timely manner under 11 CFR 103.3(b)(1). The Commission has specifically determined not to apply to LLCs the principle of dual attribution of the amounts of contributions that is applied to partnerships. Therefore, the LLC cannot provide for an attribution of the contribution to some of its members only (with a consequent reduction in their profits alone). Compare 11 CFR 110.1(e)(2). Advisory Opinion 1997-17.³

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

Sincerely,

(signed)

Joan D. Aikens
Chairman

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

³ On September 2, 1998, the Commission voted to direct the Office of General Counsel to draft a notice of proposed rulemaking which may lead to regulations specifically addressing contributions by limited liability companies. The conclusion of this opinion could be modified or superseded by the adoption of any new regulations in this area, but the opinion may be relied upon until any change is made. If a change is made, it will become effective on a specific date announced in the Federal Register. In addition, the Commission's written explanation and justification for any new rules will identify each past advisory opinion that is modified or superseded.