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FEDERAL ELECTION COMMISSION

Washington, DC 20463

**AGENDA ITEM**

For Meeting of: 11-5-98

October 29, 1998

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon   
Acting Staff Director

FROM: Lawrence M. Noble   
General Counsel

N. Bradley Litchfield   
Associate General Counsel

Jonathan M. Levin   
Senior Attorney

Subject: Draft AO 1998-25

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for November 5, 1998.

Attachment

1 **ADVISORY OPINION 1998-25**

2  
3 **Lawrence E. Scherer**  
4 **Meyer, Suozzi, English & Klein, P.C.**  
5 **One Commerce Plaza**  
6 **Suite 1810**  
7 **Albany, New York 12260**

**DRAFT**

8  
9 **Dear Mr. Scherer:**

10  
11 **This responds to your letters dated September 3 and October 2, 1998, on behalf of**  
12 **the Mason Tenders District Council of Greater New York ("the District Council"),**  
13 **requesting an advisory opinion concerning the application of the Federal Election**  
14 **Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the**  
15 **forwarding of contributions maintained in an escrow account for more than 30 days.**

16 **The District Council is an intermediate body of the Laborers' International Union**  
17 **of North America ("LIUNA"). It oversees several union locals that are affiliated with**  
18 **LIUNA. The District Council is composed of delegates elected by and representing the**  
19 **locals. It engages in collective bargaining with employers and manages pension and**  
20 **health insurance benefits for the members.<sup>1</sup>**

21 **The District Council and other locals of the New York State Laborers' Union**  
22 **formed a separate segregated fund ("SSF") named the New York State Laborers' Political**  
23 **Action Committee ("the NYS Laborers' PAC" or "the PAC"), which is affiliated with**  
24 **LIUNA's SSF, the Laborers' Political League. The NYS Laborers' PAC registered with**  
25 **the Commission on December 30, 1987, and discloses LIUNA as its connected**  
26 **organization.**

27 **In 1994, the United States filed a civil action in Federal District Court claiming**  
28 **violations by District Council officials of the Racketeer Influenced and Corrupt Practices**  
29 **Act and the Employment Retirement Income Security Act. Thereafter, the court**

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<sup>1</sup> **In addition to the factual information provided in your request letters, the factual background in this opinion is also derived from two Federal court cases involving the District Council. These are: (i) *Mason Tenders District Council of Greater New York v. Laborers' International Union of North America*, 884 F.Supp. 823 (S.D.N.Y. 1995) and (ii) *New York State Laborers' Political Action Committee v. Mason Tenders District Council of Greater New York*, No.97-CV-1731 (NPM), 1998 WL 146248 (N.D.N.Y. March 24, 1998).**

1 appointed a Federal monitor to oversee the activities of the District Council. The monitor  
2 expelled an individual from the District Council who was both a District Council official  
3 and treasurer of the NYS Laborers' PAC. Contrary to explicit instructions by the  
4 monitor, the PAC made a substantial severance payment to the individual upon his  
5 removal from the PAC. Based on his concerns as to "the efficacy and the integrity of the  
6 PAC," as confirmed by the severance payment, the monitor, in early 1997, directed that  
7 the District Council refrain from forwarding members' voluntary contributions to the  
8 PAC without his authorization. In accordance with the monitor's instructions, the  
9 District Council placed the contributions in an escrow account, where they were to be  
10 held until there was a full investigation of the PAC's activities.<sup>2</sup>

11 You state that the monitor's concerns have now been resolved by the  
12 reconstitution of the PAC. On September 8, 1998, the monitor ordered the release of the  
13 escrowed funds so that they could be forwarded to the PAC. You state that no other funds  
14 (including corporate or other impermissible funds) have been commingled with the  
15 political contributions in the escrow account, and that the escrowed funds have not been  
16 used for any expenditures or other transactions. You also explain that the escrowed  
17 contributions have not been reported to the Commission.

18 In view of the fact that the members' contributions have been held in the escrow  
19 account starting in early 1997 and continuing thereafter, which covers a time period  
20 longer than is allowable for collecting agents to hold such funds, you ask whether the  
21 District Council may now forward the contributions to the NYS Laborers' PAC.

22 Commission regulations provide that when a corporation or labor organization  
23 raises funds for its SSF, it may collect such funds and forward them to the SSF without  
24 incurring an obligation to register and report. 11 CFR 102.6(b)(2). It is thereby acting as  
25 a collecting agent. By definition, a collecting agent must be related to the SSF and may  
26 include such entities as the connected organization of the SSF and a branch or local unit  
27 of the connected organization. 11 CFR 102.6(b)(1)(ii) and (iii). When a collecting agent  
28 receives contributions that are not made by check payable to the SSF, two of its options

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<sup>2</sup> You state that the escrow account is under the control of the Federal monitor and the LIUNA trustee for the District Council.

1 are to (i) deposit the contributions into its treasury as long as it keeps separate records of  
2 such deposits, or (ii) establish a separate transmittal account used solely to deposit and  
3 transmit the contributions. 11 CFR 102.6(c)(4)(ii)(B) and (A). If any expenditure is  
4 made from the transmittal account, other than transfers to the SSF (or its affiliated  
5 committee), the account becomes a campaign depository of the SSF and all of the account  
6 activity will have to be reported. 11 CFR 102.6(c)(4)(ii)(A).

7 The collecting agent has certain obligations with respect to the transmittal of such  
8 contributions. An individual's contribution of \$50 or less shall be forwarded to the  
9 SSF's treasurer within 30 days of the collecting agent's receipt. 11 CFR 102.6(c)(4) and  
10 102.8(b)(1); 2 U.S.C. §432(b)(2)(A). If the contribution exceeds \$50, the collecting agent  
11 must forward the contribution within 10 days of its receipt, along with the name and  
12 address of the contributor and the date of receipt of the contribution. For contributions  
13 over \$200, the contributor's occupation and employer must also be forwarded with the  
14 contribution. 11 CFR 102.6(c)(4) and (5), and 102.8(b)(2); 2 U.S.C. §432(b)(1) and  
15 (2)(B).

16 By virtue of its status as an intermediate unit of LIUNA, the District Council can  
17 function as a collecting agent for voluntary contributions by members of the locals to the  
18 NYS Laborers' PAC. 11 CFR 102.6(b)(1)(iii). Other than the most recent contributions,  
19 the contributions collected by the District Council and placed in the escrow account have  
20 been held for a period exceeding the 30 day (or 10 day) period described above.  
21 Nevertheless, these funds were held in this manner because of the order of a Federal  
22 monitor performing his duties pursuant to authority granted by a Federal court. The  
23 Commission concludes that the holding of the funds in the escrow account up until this  
24 time is not prohibited by the Act and Commission regulations. Based upon your  
25 representation that these funds have not been commingled with any other funds and  
26 assuming that the contributions were otherwise lawfully solicited and collected, the  
27 Commission concludes that the contributions may be forwarded upon your receipt of this

1 opinion, and the applicable time periods will begin to run upon that date. See 2 U.S.C.  
2 §441b(b)(3); 11 CFR 114.5(a).<sup>3</sup>

3 Although you do not explicitly pose a question as to the reporting of such  
4 contributions, this issue must be addressed in view of the fact that the contributions at  
5 issue were not reported by the PAC in its reports covering the period when the  
6 contributions were initially deposited (and held) in the escrow account. Commission  
7 regulations provide that the SSF is responsible for reporting contributions received  
8 through the collecting agent. 11 CFR 102.6(c)(7). The date of the SSF's receipt for such  
9 a contribution is the date when it is received by the collecting agent. 11 CFR 102.8(b)(2);  
10 Advisory Opinion 1990-4. If a member's contributions aggregate in excess of \$200 for  
11 the calendar year, the SSF must report the date of receipt for the contribution that brings  
12 the total amount above \$200, along with the identification of the contributor and his  
13 aggregate year-to-date total. 2 U.S.C. §434(b)(3)(A); 11 CFR 104.3(a)(4)(i). In addition,  
14 the SSF must report the totals of the contributions received and the amounts that were  
15 itemized and unitemized. 2 U.S.C. §434(b)(2)(A); 11 CFR 104.3(a)(2)(i). This  
16 information is required to be reported in the reports covering the period in which they  
17 were received. See 2 U.S.C. §434(a)(4).

18 Nevertheless, you have presented unusual circumstances whereby the District  
19 Council could not lawfully forward the contributions to the PAC. Moreover, the District  
20 Council did not alter the nature of the escrow account and cause it to become an account  
21 of the PAC by making any expenditures from the account. Thus, instead of filing  
22 amended reports for each of the periods during which the contributions were held in  
23 escrow, the PAC may file a memo entry on Schedule A to the next report due. A separate  
24 schedule for each of the two years affected would be required. Each memo should  
25 disclose the contributions that were held in escrow and itemizable for that year, and  
26 disclose the total of itemizable and unitemizable contributions held in escrow during  
27 those years. Moreover, the detailed summary page of the next report due (i.e., not the

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<sup>3</sup> These citations refer to provisions in the Act requiring that contributions are voluntary and that no penalty attaches to any person who does not contribute or contributes less than a certain amount. See Advisory Opinion 1996-18, n.3.

1 memo) should add these contribution figures to the PAC's cash-on-hand total. The PAC  
2 should submit a cover letter with the report, making reference to this advisory opinion.

3 This response constitutes an advisory opinion concerning application of the Act  
4 and Commission regulations to the specific transaction or activity set forth in your  
5 request. 2 U.S.C. §437f.

6 Sincerely,

7  
8 Scott E. Thomas  
9 Acting Chairman

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11 Enclosures (AOs 1996-18 and 1990-4)  
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