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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA ITEM
For Meeting of: 1-14-99

January 7, 1999

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 1998-26

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for January 14, 1999.

Attachment

1 ADVISORY OPINION 1998-26

2
3 G. Anthony Gelderman, III
4 Tarcza & Gelderman, L.L.C.
5 1310 Whitney Building
6 228 St. Charles Place
7 New Orleans, LA 70130

DRAFT

8
9 Dear Mr. Gelderman:

10
11 This responds to your letter dated November 13, 1998, as supplemented by your
12 letter dated December 9, 1998, on behalf of The Friends of Mary Landrieu, Inc. ("the
13 Landrieu Committee"), concerning the application of the Federal Election Campaign Act
14 of 1971, as amended ("the Act"), and Commission regulations to the acceptance of a loan
15 repayment from a fund established to defend against an election challenge.

16 The Landrieu Committee is the principal campaign committee of Senator Mary
17 Landrieu for her campaign for re-election to the U.S. Senate in 2002 and filed its
18 statement of organization with the Commission on November 25, 1996.¹ Ms. Landrieu
19 was first elected to the Senate in the 1996 general election. In March 1997, the Louisiana
20 Contested Election Trust Fund ("the Trust Fund") was established to raise and spend
21 funds necessary to defend against a challenge to the results of the 1996 general election
22 brought by the opposing candidate in that election.² It filed a statement of organization
23 with the Commission on June 6, 1997.³

24 You state that the Trust Fund was established as a separate vehicle from the
25 Landrieu Committee because Senate Ethics Committee staff informed Senator Landrieu
26 that Senate rules did not permit the Landrieu Committee to receive any funds that were
27 not within the limits of the Act, even if such funds were used to finance a response to an
28 election challenge.

¹ It originally filed as the Re-Elect Mary Landrieu for Senate Committee. An amended statement of organization filed on November 3, 1998, disclosed the change to the present name.

² After a narrow loss to Ms. Landrieu in the November 1996 election, Ms. Landrieu's opponent, State Representative Woody Jenkins challenged the results in state court alleging fraud and other unlawful activities. After withdrawing the suit, Mr. Jenkins filed a petition contesting the election, in December 1996, with the U.S. Senate. On October 1, 1997, the Senate Rules Committee voted to end its investigation into the matter.

³ The Trust Fund was first established as the Louisiana Contested Election Fund, Inc. and changed its name to the present title in July 1997.

1 Between March 27 and June 16, 1997, the Landrieu Committee made six loans to
2 the Trust Fund totaling \$122,000.⁴ The Trust Fund repaid \$25,000 to the Landrieu
3 Committee on July 22, 1997, and still owes \$97,000 to the Landrieu Committee. You
4 propose that the Trust Fund make the loan repayment to the Landrieu Committee at this
5 time in one lump sum. The Trust Fund has a \$150,000 line of credit, secured by personal
6 assets of Senator Landrieu, with the First National Bank of Commerce in New Orleans.
7 The Trust Fund would borrow \$97,000 on this line, repay the Landrieu Committee, and
8 thereafter raise funds from individuals to repay the bank on the line of credit.⁵ You
9 indicate that these transactions are intended to provide cash for the Landrieu Committee
10 at this time, and are part of an effort to bring the Trust Fund's activities "closer to
11 conclusion." You ask whether the proposed transaction is permissible under the Act and
12 Commission regulations.

13 The Act and Commission regulations define the terms "contribution" and
14 "expenditure" to include any gift, loan, or payment of money or anything of value for the
15 purpose of influencing a Federal election. 2 U.S.C. §431(8)(A)(i) and (9)(A)(i); 11 CFR
16 100.7(a)(1) and 100.8(a)(1). Commission regulations make exceptions from the cited
17 definitions for gifts, loans, or payments made with respect to a recount of the results of a
18 Federal election, or an election contest concerning a Federal election. 11 CFR
19 100.7(b)(20) and 100.8(b)(20).⁶ In granting these exceptions, however, the regulations
20 also bar the receipt or use of funds prohibited by 11 CFR 110.4(a) and Part 114; that is,
21 funds from corporations, national banks, labor organizations, or foreign nationals. *Id.*

22 Under the Act, a Federal candidate raising and spending funds to defend against
23 an election challenge may raise funds using her principal campaign committee, or she
24 may set up a separate organizational entity established solely for the purposes of funding
25 the defense effort. See Advisory Opinion 1978-92. A principal campaign committee

⁴ The amounts and dates of such loans were as follows: (1) \$3,000 on March 27; (2) \$30,000 on April 7; (3) \$8,000 on April 18; (4) \$23,000 on May 5; (5) \$20,000 on May 23; and (6) \$38,000 on June 16.

⁵ The line of credit is reported on the Trust Fund's 1997 year end report filed with the Commission. According to the report, this \$150,000 line of credit was incurred on December 16, 1997, at an interest rate of 9.5%, and is guaranteed by Senator Landrieu. In describing the line of credit in your request, you state that it is "maintained personally" by Senator Landrieu, and that the draw will effectively constitute a loan to the Trust Fund by Senator Landrieu.

⁶ In explaining these exceptions, the Commission stated that, although such contests are related to elections, they are not Federal elections as defined by the Act. Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 40 (1977).

1 receiving donations designated for such an effort should establish a separate bank account
2 and the receipts and disbursements of the account would be reportable transactions of the
3 committee, within the categories of "other receipts" and "other disbursements"
4 respectively. 2 U.S.C. §434(b)(2)(J) and (4)(G); 11 CFR 104.3(a)(3)(x) and (b)(2)(vi).⁷
5 A principal campaign committee, such as the Landrieu Committee, may also disburse
6 funds derived from the contributions it received for Federal elections, i.e., contributions
7 subject to the Act's limitations and prohibitions, for the purpose of defending against an
8 election challenge.

9 Rather than setting up a separate account of a principal campaign committee,
10 Senator Landrieu organized a separate entity, the Trust Fund, to finance her election
11 challenge defense. The receipts and disbursements of such an entity would not be
12 contributions and expenditures under the Act and the entity would not be required to
13 register and file reports pursuant to the Act. In this case, however, the Trust Fund has
14 registered and files reports with the Commission. As indicated above, any receipts and
15 disbursements of the entity may not come from the sources cited in the exceptions, but
16 the entity may receive and use donations that exceed the various limits (\$1,000, \$5,000,
17 or \$25,000) of 2 U.S.C. §441a(a)(1)-(3).

18 Assuming that the Trust Fund has not accepted and retained any funds from the
19 listed prohibited sources, the \$97,000 loan repayment by the Trust Fund to a political
20 committee, the Landrieu Committee, would be permissible, under the exception at 11
21 CFR 100.8(b)(20), as a payment made with respect to an election contest.⁸ The Landrieu
22 Committee's acceptance of the repayment would also be permissible under 11 CFR
23 100.7(b)(20). Given the fact that the Landrieu Committee made the loans from
24 contributions and not from donations made for the purposes of funding the election

⁷ The identification of each donor giving over \$200 in a calendar year would be itemized along with the date and amount. 2 U.S.C. §434(b)(3)(G); 11 CFR 104.3(a)(4)(vi). The identification of each person who has received a disbursement, with respect to a defense of an election challenge, aggregating in excess of \$200 in a calendar year would be itemized along with the date, amount, and purpose. 2 U.S.C. §434(b)(6)(A); 11 CFR 104.3(b)(4)(vi).

⁸ The Commission notes that the Trust Fund's most recent report, the 1998 October Quarterly, discloses, as part of the debts and obligations it owes, that two contributions are to be returned to corporate entities. The Trust Fund shall return or refund these contributions prior to commencing the proposed transactions.

1 challenge, it does not have to place the loan repayment receipts in any special account,
2 and it may use the funds for Federal election influencing purposes.⁹

3 As indicated above, the activities of a separate entity should be devoted solely to
4 the election contest activities. It operates under specific exceptions to the definitions of
5 contribution and expenditure that are granted in the regulations. Thus, the entity cannot
6 accept more funds than are needed to pay its expenses and debts incurred for election
7 contest purposes. This means that, in collecting funds to repay the bank on the line of
8 credit, the Trust Fund cannot accept the full \$97,000 from the individual contributors if it
9 also has cash on hand to pay the debts of the Trust Fund. In view of the Trust Fund's
10 intent to terminate its activities, it can only accept the amount necessary to eliminate its
11 net debt. For example, according to the Trust Fund's 1998 October quarterly report,
12 which is its most recent report, it has approximately \$50,000 on hand, has no debts
13 receivable, and owes approximately \$119,000 (including \$97,000 to the Landrieu
14 Committee and \$22,000 in other debts.). If these amounts are unchanged at the time of
15 its proposed activities, the Trust Fund may only accept \$69,000 from the individuals, plus
16 the amount incurred in fundraising expenses, i.e., the amount comprising its net debt. See
17 11 CFR 110.1(b)(3)(ii) and (iii).¹⁰

18 The Commission expresses no opinion regarding any tax ramifications of the
19 proposed activity or the application of any rules of the U.S. Senate to the activity because
20 those issues are not within its jurisdiction.

⁹ The Landrieu Committee's ability to accept the loan repayment is also analogous to the permissible acceptance by a political committee in other situations. Commission regulations provide that the repayment to a political committee of a loan made by it is not a contribution by the debtor (except to the extent that the interest paid exceeds a commercially reasonable rate), but the repayment of the principal and interest may not be made from funds prohibited by 11 CFR 110.4(a) and Part 114. 11 CFR 100.7(a)(1)(i)(E); see Advisory Opinion 1992-28.

¹⁰ The Commission notes that the Trust Fund reports indicate past use of funds for purposes other than election contest defense. The Trust Fund obtained permission from over 20 individuals to redirect their contributions to Senator Landrieu's 1995 gubernatorial campaign. In addition, the Trust Fund reported a loan of \$2,000 to Senator Landrieu's principal campaign committee for her 1996 Senate campaign, which may have been repaid about a year later. In view of the fact that this is past activity, this opinion does not address issues pertaining to these transactions. See 11 CFR 112.1(b).

In addition, this advisory opinion does not conclude, expressly or implicitly, that all the transactions presented on the reports of the Trust Fund or the 1996 and 2002 principal campaign committees, including transfers between those committees, are in compliance with the Act or Commission regulations. Instead, the Commission's opinion is based on the facts presented in your request and the situation of the Trust Fund as disclosed in its most recent report filed with the Commission.

