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FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 16, 1999

MEMORANDUM

AGENDA ITEM
For Meeting of: 6-24-99

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael G. Marinelli
Staff Attorney

SUBJECT: Draft AO 1999-13

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for June 24, 1999.

Attachment

1
2 **ADVISORY OPINION 1999-13**

3
4 **Allison R. Hayward, Legal Counsel**
5 **National Republican Congressional Committee**
6 **320 First Street, SE**
7 **Washington, DC 20003**

DRAFT

8
9 **Dear Ms. Hayward:**

10
11 **This refers to your letters dated May 11 and 25, 1999, requesting an advisory**
12 **opinion concerning the application of the Federal Election Campaign Act of 1971, as**
13 **amended ("the Act"), and Commission regulations to clarify language in Commission**
14 **regulations which determine reimbursement for a Federal candidate's use of corporate or**
15 **labor owned aircraft.**

16 **You state that as a national party committee, the National Republican**
17 **Congressional Committee (the "NRCC") participates in political fundraising events**
18 **across the country, many of which feature candidates for Congress. On occasion, aircraft**
19 **owned by corporations not licensed to provide commercial air service are used to**
20 **transport these individuals to the campaign events. You note that the NRCC may provide**
21 **reimbursement of this use and make an in-kind contribution to the candidate.**

22 **You further note that Commission regulations found at 11 CFR 114.9(e)(1) specify that**
23 **the rate of reimbursement which a candidate must pay a corporation (or labor**
24 **organization) for the use of the corporate (or labor) aircraft is tied to the rate of service,**
25 **commercial or charter (depending on the circumstances), to the city to which the**
26 **candidate is traveling. Your concern is the meaning and scope of the term "city" in the**
27 **regulation.**

1 You explain that the realities of modern air transportation are such that a number
2 of airports, large and small, serve any given metropolitan area. Yet, you note, few of
3 these may actually be located within the "city" that is the candidate's destination. You
4 state that the NRCC has encountered a number of specific instances in which the literal
5 application of the term "city" could lead to an absurd result. Your request includes two
6 attachments, the Ac-U-Kwik Airport/FBO Directory, ("the corporate directory") which,
7 you state, is the charter industry's standard reference for airports; and the FAA's (Federal
8 Aviation Administration) list of public use airports ("FAA directory"). With reference to
9 these documents, you present four specific geographical situations which highlight the
10 NRCC's concern:¹

11 1. *Cincinnati, Ohio*: You state that a corporation would like to provide transportation
12 for a Federal candidate in a corporate airplane that will land at Lunken Field in
13 Cincinnati ("LUK"). The commercial airport used by passengers traveling via
14 commercial air service to Cincinnati is the Cincinnati/Northern Kentucky
15 International Airport ("CVG") located in Covington, Kentucky. CVG is listed in the
16 corporate directory as serving both Covington and Cincinnati. The FAA directory
17 lists LUK under Cincinnati and CVG under Covington/Cincinnati. Given section
18 114.9(e)(1) use of the word "city", you state that it is unclear whether Cincinnati is "a
19 city serviced by regularly scheduled commercial service" via CVG, or whether that
20 status is limited to Covington.

¹ In your May 25 letter, you affirm that the cities listed below are the destination campaign stops for the Federal candidates who may use corporate planes for campaign travel.

- 1 2. *Hartford, Connecticut:* A corporation would like to transport a Federal candidate in a
2 corporate airplane to Hartford via Brainard Airport in Hartford ("HFD"). The
3 commercial airport used by passengers traveling via commercial air service to
4 Hartford is Bradley International Airport ("BDL") which is in Windsor Locks,
5 Connecticut. BDL is cross-referenced under the corporate directory for Hartford and
6 also listed for Windsor Locks.. The FAA directory lists BDL under Windsor Locks,
7 and HFD under Hartford. You ask whether Hartford is a city served by regularly
8 scheduled commercial service, or is that status limited to Windsor Locks.
- 9 3. *New Orleans, Louisiana:* A corporation would like to transport a Federal candidate in
10 a corporate airline to New Orleans via New Orleans Lakefront Airport in New
11 Orleans ("NEW"). The commercial airport used by passengers traveling via
12 commercial air service to New Orleans, is New Orleans International Airport
13 ("MYS"), and according to airport's Web page (a print copy of which is included in
14 your request), MSY is located in Kenner, Louisiana. The corporate directory and the
15 FAA directory both list MSY and NEW as serving New Orleans. You ask is New
16 Orleans a city served by regularly scheduled commercial service or is that status
17 limited to Kenner?
- 18 4. *Chicago, Illinois:* A corporation would like to transport a Federal candidate in a
19 corporate airplane to Chicago via Aurora Municipal Airport ("ARR"), which is a
20 reliever airport for O'Hare International Airport ("ORD"). A number of commercial
21 airports serve the Chicago area, including Midway ("MDW") and ORD. The
22 corporate directory lists ARR under Chicago (not Aurora), along with MDW and
23 ORD. The FAA listing of public use airports lists ten separate airports as Chicago

1 airports (including Aurora). You argue that using these materials for guidance, it
2 would seem reasonable that Chicago would be treated as a city served by regularly
3 scheduled commercial service, and flights to and from Chicago that use ARR would
4 be valued under section 114.9(e)(1)(i).

5 Based on past experience in planning itineraries for candidates, you argue that
6 a logical interpretation of section 114.9(e)(1) should recognize that particular destination
7 cities may be serviced by several airports, and that commercial service at any one of these
8 should make the destination a "city served by regularly commercial service" for purposes
9 of the regulation.

10 Under 11 CFR 114.9(e)(1):

11 (1) A candidate, candidate's agent, or person traveling on behalf of a candidate
12 who uses an airplane which is owned or leased by a corporation or labor organization
13 other than a corporation or labor organization licensed to offer commercial services for
14 travel in connection with a Federal election must, in advance, reimburse the corporation
15 or labor organization--

16 (i) In the case of travel to a city served by regularly scheduled commercial service,
17 the first class air fare;

18 (ii) In the case of travel to a city not served by a regularly scheduled commercial
19 service, the usual charter rate.

20 While your request seeks to clarify the definition of the term "city" for purposes
21 of section 11 CFR 114.9(e)(1), the question is more precisely characterized as how to
22 determine when a particular city is "served by regularly scheduled commercial air
23 service." The regulation addresses a "city" as the travel destination for the campaign

1 appearance or event, rather than restricting its terms to specific airports. This obviously
2 contemplates situations, such as those you present, in which airports serve more than one
3 city, or in which a particular city is served by more than one airport. The regulation
4 could not reasonably be interpreted as requiring an airport to be within the corporate
5 limits of a city in order for that city to be considered as being served by regularly
6 scheduled commercial air service. The Commission agrees that it is reasonable to use
7 published sources such as the FAA directory and the corporate directory in determining
8 whether a particular city is so served.

9 The Commission concludes that the examples which you present--Cincinnati,
10 Ohio; Hartford, Connecticut; New Orleans, Louisiana; and Chicago, Illinois--all qualify
11 as cities which have regularly scheduled commercial service. Candidates may calculate
12 the amount of payment for travel to these cities on corporate or labor owned aircraft
13 according to the cost of round-trip first class air fare to those cities, rather than the usual
14 charter rate, regardless of whether the aircraft uses the commercial airports cited in your
15 request or other airports also serving the same city. The Commission notes that under
16 section 114.9(e)(1), the candidate using corporate (or labor) owned aircraft must pay the
17 corporation (or labor organization) in advance. This would be the amount of the in-kind
18 contribution made by the NRCC to the various campaigns to cover the cost of the travel,
19 and NRCC's payment at the proper rate must be made in advance to the corporations that
20 own or operate the aircraft used for the campaign travel.

