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FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 14, 1999

MEMORANDUM

AGENDA ITEM
For Meeting of: 10-21-99

TO: The Commission

THROUGH: James A. Pehrson
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael G. Marinelli
Staff Attorney

SUBJECT: Draft AO 1999-23

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 21, 1999.

Attachment

1
2 **ADVISORY OPINION 1999-23**

3
4 **Ken D. Hammonds, Director of Administration**
5 **The Arkansas Bankers Association**
6 **1220 West Third Street**
7 **Little Rock, Arkansas 72201**

DRAFT

8
9 **Dear Mr. Hammond:**

10
11 **This refers to your letter dated August 27, 1999, requesting an advisory opinion**
12 **concerning the application of the Federal Election Campaign Act of 1971, as amended**
13 **("the Act"), and Commission regulations to your proposal for the acceptance of a**
14 **replacement contribution check made to Arkansas Bankers, Inc. PAC ("ABPAC") to**
15 **cover a similar check lost in 1998.**

16 **The Arkansas Bankers Association is the connected organization for ABPAC. You**
17 **state that on December 29, 1998, Arvest PAC mailed a check payable to ABPAC in the**
18 **amount of \$4,000. You explain that this check was never received by ABPAC and has**
19 **not cleared Arvest Pac's checking account. You assert that Commission "records**
20 **indicate the same."**

21 **You state that ABPAC proposes to request a new check from Arvest PAC. Arvest**
22 **PAC, in turn, is awaiting Commission advice as to the legality of issuing a new**
23 **replacement check and stopping payment on the previous lost check. You further state**
24 **that Arvest PAC made a separate contribution to ABPAC in 1999, in the amount of**
25 **\$5,000, and you do not want this contribution to be "confused" by the Commission for**
26 **the lost 1998 contribution check.**

27 **Under 2 U.S.C §441a(a)(2)(C), no multicandidate political committee shall make**
28 **contributions to any other political committee in any calendar year which, in the**

1 aggregate, exceed \$5,000. See also 11 CFR 110.2(d). Commission regulations provide
2 at 11 CFR 110.2(b)(6) that for the purposes of section 110.2, a contribution shall be
3 considered to be made when the contributor relinquishes control over the contribution. A
4 contributor shall be considered to relinquish control over the contribution when it is
5 delivered by the contributor to the candidate, to the political committee, or to an agent of
6 the political committee. A contribution that is mailed to the candidate, or to the political
7 committee or to an agent of the political committee, shall be considered to be made on the
8 date of the postmark. See 11 CFR 110.1(1)(4). An in-kind contribution shall be
9 considered to be made on the date that the goods or services are provided by the
10 contributor.

11 Reports filed with the Commission indicate that Arvest PAC is a multicandidate
12 committee. Further, Arvest PAC listed in its 1998 year end report, the making of a
13 \$4,000 contribution to ABPAC. Neither ABPAC's 1998 year end report, nor its 1999
14 mid-year report, indicate the receipt of this contribution. Under 11 CFR 110.2(b)(6), the
15 initial contribution of \$4,000 by Arvest PAC would have been considered as having been
16 made on December 29, 1998. However, the Commission notes that ABPAC never
17 received the mailed contribution, and apparently made its inquiry to Commission staff
18 about this situation before the filing due date (July 31, 1999) of the report that would
19 have disclosed the contribution, if it had been received within what would have been the
20 expected or normal time frame for reasonably expecting first class mail delivery service.
21 Further, the circumstances for the failure to receive the first check were apparently

1 beyond the control of either committee or its agents.¹ In this situation, the Commission
2 notes that the initial making of the contribution has been effectively nullified. The
3 Commission, therefore, concludes that ABPAC may request and receive a replacement
4 check for \$4,000 from Arvest PAC without that replacement check affecting Arvest
5 PAC's contribution limits for 1999. However, to ensure that the replacement check
6 properly relates back to the earlier 1998 contribution check, Arvest PAC is required to
7 stop payment on the December 29, 1998 check. ABPAC must also receive, with the
8 replacement check, confirmation of the stop payment order and a written statement from
9 Arvest PAC confirming the initial contribution along with an explanation that the Arvest
10 PAC replacement check is for the lost contribution originally made in 1998.

11 ABPAC should report this contribution as a 1998 calendar year contribution on
12 Schedule A of its next report covering the period when the replacement check is received.
13 The report should include a brief notation explaining the circumstances of the lost 1998
14 contribution check, making reference to this opinion and the documentation it has
15 received from Arvest PAC.

¹ The Commission has considered the somewhat similar situation where a committee has received contribution checks, but then its use or deposit of the contribution checks was interrupted by persons or events. The Commission has concluded that where the interruption was caused by events or persons outside of the control of the committee or its agents, the committee should be permitted to deposit the checks or obtain replacement checks. See Advisory Opinions 1993-5 and 1992-42. In contrast, where the interruption was caused by committee negligence, the Commission's interpretation of section 110.1(b) and 110.2(b), and also 103.3(a), has required the committee to refund the checks or not permitted replacement checks where the contributor's contribution limits for the current election would be exceeded. See Advisory Opinion 1992-29.

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

4 Sincerely,
5 Scott E. Thomas
6 Chairman

7
8 Enclosures (AOs 1993-5, 1992-42, and 1992-29).