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July 18, 2000

N. Bradley Litchfield
Associate General Counsel for Policy
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

AOR 2000-20

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
JUL 18 2 59 PM '00
2000 JUL 18 09:52:01

Re: Advisory Opinion Request

Dear Mr. Litchfield:

The five individuals listed below (collectively, "the organizers"), who are all involved in different facets of the provision of cancer care, would like to form a political committee ("the Committee") to support candidates for federal office sympathetic to their cause. In addition to their full-time employment, each of the organizers is involved, in one way or another, with one or more professional or trade associations concerned with cancer care. Accordingly, the organizers hereby request an advisory opinion pursuant to the Federal Election Campaign Act ("FECA"), 2 U.S.C. § 437f, and Federal Election Commission ("FEC" or "the Commission") regulations, 11 C.F.R. § 112, to confirm that none of the following professional or trade associations with which they are associated will be considered connected to the Committee: the Association of Community Cancer Centers, the Oncology Nursing Society, the Oncology Nursing Foundation, the Oncology Nursing Certification Corporation, Oncology Education Services, Inc., the American College of Surgeons, or the Illinois Medical Oncology Society.

Statement of Facts

The organizers propose to form an independent political action committee, to be named the Committee for Quality Cancer Care, specifically to receive contributions and to expend the same for activities that are directly related to supporting the selection, nomination, election or appointment of individuals to public office, or office in a political organization, who support quality cancer care.

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The proposed Board of Directors of the Committee (the "Board") will consist of five members. They are as follows:

David K. King, MD, FACP, is a medical oncologist engaged in private practice in Phoenix, Arizona. He is also a Member of the Commission on Cancer for the American College of Surgeons and Chairman of the ACCC Ad Hoc Committee on Reimbursement.

Pearl Moore, RN, MN, FAAN, is Chief Executive Officer of the Oncology Nursing Society ("ONS"), the Oncology Nursing Foundation, the Oncology Nursing Certification Corporation, and Oncology Education Services in Pittsburgh, Pennsylvania. She is also an Adjunct Assistant Professor at the University of Pittsburgh School of Nursing.

Lee E. Mortenson, DPA, is President and CEO of ELM Services, Inc. which, in part, is involved in the design and development of cancer programs for hospitals. He is also Executive Director of the Association of Community Cancer Centers ("ACCC").

Roberta A. Strohl, RN, MN, ASCN, is a Patient Care Consultant with Schering Plough Corporation.

James L. Wade, MD, is the Director of Medical Oncology at Decatur Memorial Hospital in Decatur, Illinois. He also serves as the Medical Director for the DMH Cancer Care Institute at that institution. Mr. Wade is also a board member of the Illinois Medical Oncology Society and a member of the Editorial Board of Oncology Issues.

The initial costs of organizing the Committee will be paid solely from contributions received by the Committee. Thereafter, all of the operational expenses will also be paid from contributions to the Committee. A member of the ONS staff will serve separately as the Assistant Treasurer for the Committee and will be compensated by the Committee solely from contributions received. The Assistant Treasurer will not be a member of the Board.

The organizational structure of the Committee will be designed to ensure that the committee is operationally independent of any organization with which the members of the Board are affiliated. The Committee will share office space with the ONS. In order to prevent the use of the ONS's facilities from constituting impermissible financial support for a nonconnected political committee, the organizers of the Committee plan to pay the ONS for the actual cost of all administrative expenses, including rent, photocopying, and telephone charges.

Rental costs will be determined using an allocation method whereby the amount of time the space is devoted to Committee activities will be compared to the total amount of time the space is used for all activities. Photocopying charges will be paid at a fixed amount per page that reflects the ONS's actual cost of providing photocopying machines

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and supplies. Telephone charges will be reimbursed by paying the ONS the actual cost of any long distance charges plus a portion of the base monthly charge determined by the same allocation method used to determine rent. As noted above, all of the administrative expenses will be paid solely from contributions received by the Committee.

Discussion of Authority

The Commission Has Consistently Approved the Creation of Nonconnected Political Committees by Individuals in the Absence of a Connected Organization

A corporation that directly or indirectly establishes, administers or supports a political committee is the connected organization of that committee. 2 U.S.C. § 431(7). As such, the committee and its connected organization are restricted in the scope of their contribution solicitations. 2 U.S.C. §§ 441b(b)(4)(A) and (C). A nonconnected committee, on the other hand, is a political committee that is not a party committee, an authorized committee of a candidate, or a separate segregated fund established by a corporation or labor organization. 11 C.F.R. § 100.5(a) and 11 C.F.R. § 106.6(a). Such committees are thereby "free to solicit 'the world.'" Bread Political Action Committee v. Federal Election Commission, 635 F.2d 621; Advisory Opinion 1997-15, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 6245.

Given that the committee proposed by the organizers is not a party committee or an authorized committee of a candidate, the relevant question for purposes of this advisory opinion request is whether the Committee is a separate segregated fund of a "connected organization." We believe the Commission will find that the proposed Committee is a nonconnected committee because it has no "connected organization." That is, no corporation or labor organization will be establishing, administering or raising money for the Committee, either directly or indirectly. 11 C.F.R. § 100.6(a). In addition to not being affiliated with a corporation or labor organization, the Committee will not be sponsored by any unincorporated entity with a corporate affiliation, such as a trade association.

Although the Commission has used several different criteria in its determination of nonconnectedness, three of the most significant distinguishing factors of nonconnected committees are that they be: (1) established by persons acting in their individual capacities, (2) operated and governed independent of the organizations with which the founding individuals are associated, and (3) not financially supported by the organizations with which the founders are associated. Advisory Opinion 1997-15, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 6245. See also Advisory Opinion 1998-11, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 6268; Advisory Opinion 1991-37, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 6040.

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The Commission has long recognized that neither FECA nor FEC regulations “prescribe qualifications on the individuals who may establish, organize, and direct a nonconnected political committee; nor do they necessarily prohibit individuals who have some association with a corporation, labor organization, or trade association from such activity.” Advisory Opinion 1984-12, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5765. See also Advisory Opinion 1998-11, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 6268; Advisory Opinion 1997-26, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 6254. But see Advisory Opinion 1977-2, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5302.¹ It is sufficient that the individuals demonstrate that their activities with respect to the relevant political committee are not operationally or financially connected to the activities they pursue on behalf of their respective organizations.

As stated above, the organizers fully intend to establish the Committee independent of any of their employment and association activities, using contributions received by the Committee. The Committee will be operated and governed independently of any of the aforementioned organizations and none of those organizations will provide funding for the establishment or administration of the Committee nor participate in raising funds for the Committee.

The Organizational and Operational Elements of the Committee Satisfy all of the Requirements for a Nonconnected Committee

The criteria for establishing a nonconnected political committee (“PAC”) were recently detailed in Advisory Opinion 1997-15, where the Commission allowed the president of a membership organization, Better Government Bureau, Inc. (“BGB”), to

¹ Unlike the aforementioned advisory opinions on this subject, AO 1977-2 found that determining whether a political committee was “connected” to a trade association required “a review of the operational interaction between the trade association and political committee as well as analysis of the extent to which individuals having a relationship with the trade association or its members are also involved in ‘directly or indirectly’ establishing, administering or financially supporting the political committee in question.” *Id.*

AO 1977-2 then went on to conclude that the political committee in question was “connected” to the trade association because individuals and separate segregated funds affiliated with trade association members made 42% of all the contributions the committee received in a given year. The Commission apparently concluded that these contributions constituted trade association financial support for the committee.

Congress repudiated this interpretation in 1979 when it codified, for the first time, the definition of “connected organization.” The legislative history of the 1979 amendments states clearly that “the words ‘financially supports’ do not refer to organizations which make contributions to the political committee. Rather, the phrase ‘financially supports’ refers to the entity which [pays] the establishment, administrative, and solicitation costs of such committee.” H.R. Rep. No. 422, 96th Cong., 2nd Sess. 6, reprinted in 1979 U.S. Code Cong. & Admin. News 2860, 2866. (Emphasis in original).

The Commission amended its regulations defining the term “connected organization” shortly thereafter. 11 C.F.R. § 100.6 (1995) See also Explanation and Justification of Regulations Concerning January 8, 1980 Amendments to Federal Election Campaign Act of 1971, 45 Fed. Reg. 15080 (March 7, 1980) (“[O]nly an entity that pays for the establishment, administration or solicitation costs of the committee will be regarded as a connected organization.”).

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establish such a PAC. BGB was a corporation that only employed the president of the corporation and his wife, and the only BGB employee on the board of directors for the PAC was the president.

The Commission found that this individual, along with other non-BGB employees, could establish a political committee that would not be considered connected to the incorporated association, provided that the committee followed certain guidelines, namely: (1) the PAC pay for certain kinds of support from the incorporated entity within a commercially reasonable period of time, (2) the PAC pay for certain services in advance, (3) the number of board members connected with the incorporated association remain minimal in proportion to the total number of board members, and (4) the PAC not use the name or letterhead of the incorporated entity to solicit contributors, nor hold joint fundraisers with such entity. Advisory Opinion 1997-15, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 6245.

The factors present in Advisory Opinion 1997-15 are largely indistinguishable from the situation with respect to the Committee. The proposed Executive Director of the Board of the Committee, Ms. Pearl Moore, is also the Chief Executive Officer of the Oncology Nursing Society ("ONS"). However, out of the five Board members, she will be the only one who holds a position with the ONS. See Advisory Opinion 1997-15, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 6245; Advisory Opinion 1991-37, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 6040; Advisory Opinion 1997-26, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 6254. The Committee plans to utilize space provided by the ONS. However, the Committee will pay for the use of such space as well as any associated services (such as photocopying and telephone usage) within a commercially reasonable time period and at the usual and normal charge. 11 C.F.R. § 114.9 (c) and (d).

Although two of the organizers are associated with the ACCC, only one of them, Dr. Lee Mortenson, holds a position on the board of the ACCC. That individual will assume the position as Treasurer of the Committee. However, his activities with respect to the Committee will be conducted completely separately from those he conducts on behalf of the ACCC. The FEC has repeatedly endorsed the organization of nonconnected political committees where only one officer from an organization holds a position on the board of the political committee. Advisory Opinion 1997-26, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 6254; Advisory Opinion 1997-15, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 6245; Advisory Opinion 1991-37, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 6040. Such is the case with regard to ACCC.

Additionally, the remaining members of the proposed Board are individually, not collectively, involved with their respective organizations. Dr. David King is the only proposed Board member involved in a leadership role with the American College of Surgeons; Dr. James Wade is the only Board member who is also a board member of the Illinois Medical Oncology Society; and Ms. Roberta Strohl is not currently a board member of a trade or professional association.

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The Committee intends to continue its organizational and operational independence from these organizations in compliance with the requirements for a nonconnected committee. Accordingly, we believe that FECA, applicable FEC regulations and the Commission's long line of advisory opinions demonstrate that none of the organizations should be considered a connected organization of the proposed Committee for Quality Cancer Care.

If you require any additional information to respond to this request, please do not hesitate to contact me.

Sincerely,



Brett G. Kappel

For Powell, Goldstein, Frazer & Murphy LLP

**Cc: Dr. David K. King
Ms. Pearl Moore
Dr. Lee E. Mortenson
Ms. Roberta A. Strohl
Dr. James Wade
Kyra Fischbeck, Esq.**