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2000 SEP -7 P 3: 58

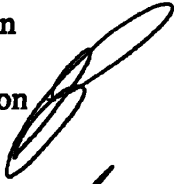
September 7, 2000


## AGENDA ITEM

For Meeting of: 9-14-00

### MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon   
Staff Director

FROM: Lawrence M. Noble   
General Counsel

N. Bradley Litchfield *NBL (res)*  
Associate General Counsel

Michael G. Marinelli *mm*  
Staff Attorney

Subject: Draft AO 2000-20

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for September 14, 2000.

Attachment

1  
2 **ADVISORY OPINION 2000-20**

3  
4 **Brett G. Kappel**  
5 **Powell, Goldstein, Frazer & Murphy LLP**  
6 **Sixth Floor**  
7 **1001 Pennsylvania Avenue, NW**  
8 **Washington, DC 20004**

**DRAFT**

9  
10 **Dear Mr. Kappel:**

11  
12 **This refers to your letter dated July 18, 2000, requesting an advisory opinion**  
13 **concerning the application of the Federal Election Campaign Act of 1971, as amended**  
14 **("the Act") and Commission regulations to the creation of a proposed non-connected**  
15 **political action committee by several individuals.**

16 **FACTS**

17 **You state that five individuals listed below (collectively, "the organizers"), who**  
18 **are all involved in different facets of providing care to cancer patients, propose to form a**  
19 **political committee that would support candidates for Federal office sympathetic to their**  
20 **cause. In addition to their full-time employment, each of the organizers is involved, in**  
21 **one way or another, with one or more professional or trade associations concerned with**  
22 **cancer patient care.**

23 ***Background of organizers***

24  
25 **The organizers propose to form an independent political action committee, to be**  
26 **named the Committee for Quality Cancer Care ("the Committee"), specifically to receive**  
27 **contributions and to expend the same for activities that are directly related to supporting**  
28 **the selection, nomination, election or appointment of individuals to public office, or**  
29 **office in a political organization, who support quality cancer care. You identify the**

1 organizers who would serve on the proposed Board of Directors of the Committee (the  
2 "Board"). They are:

3 David K. King, MD, FACP, a medical oncologist engaged in private practice in Phoenix,  
4 Arizona, who is also a Member of the Commission on Cancer for the American  
5 College of Surgeons and Chairman of the Association of Community Cancer Centers  
6 ("ACCC") Ad Hoc Committee on Reimbursement.

7  
8 Pearl Moore, RN, MN, FAAN, Chief Executive Officer of the Oncology Nursing Society  
9 ("ONS"), the Oncology Nursing Foundation, the Oncology Nursing Certification  
10 Corporation, and Oncology Education Services in Pittsburgh Pennsylvania and also an  
11 Adjunct Assistant Professor at the University of Pittsburgh School of Nursing.

12  
13 Lee E. Mortenson, DPA, President and CEO of ELM Services, Inc. (which is involved in  
14 the design and development of cancer programs for hospitals), and Executive Director of  
15 the ACCC.

16  
17 Roberta A. Strohl, RN, MN, ASCN, a Patient Care Consultant with Schering Plough  
18 Corporation.

19  
20 James L. Wade, MD, Director of Medical Oncology at Decatur Memorial Hospital (and  
21 Medical Director for the DMH Cancer Care Institute) in Decatur, Illinois; a board  
22 member of the Illinois Medical Oncology Society and a member of the Editorial Board of  
23 *Oncology Issues*.

1 ***Structural and financial arrangements***

2

3 You explain that the initial costs of organizing the Committee will be paid solely  
4 from contributions received by the Committee. Thereafter, all of the operational  
5 expenses will also be paid from contributions to the Committee. A member of the ONS  
6 staff will serve separately as the assistant treasurer for the Committee and will be  
7 compensated by the Committee solely from contributions received.<sup>1</sup> The assistant  
8 treasurer will not be a member of the Board while the Committee treasurer, Dr. Lee E.  
9 Mortenson, a member of the ACCC board, will be a Board member.

10 The organizational structure of the Committee will be designed to ensure that it is  
11 operationally independent of any organization with which the members of the Board are  
12 affiliated. The Committee will share office space with ONS. However, in order to  
13 prevent the use of ONS facilities in a manner that could constitute impermissible  
14 financial support for a non-connected political committee, the organizers of the  
15 Committee plan to pay ONS for the actual cost of all administrative expenses, including  
16 rent, photocopying, and telephone charges.

17 Rental costs will be determined using an allocation method whereby the amount  
18 of time the ONS office space is devoted to Committee activities will be compared to the

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<sup>1</sup> The Commission assumes that all members of the Committee's Board and all other committee employees will be compensated (if at all) by the contributions received. Any amount paid by someone else for services to the Committee would be a contribution. 2 U.S.C. §431(8)(A)(ii). The Commission notes that providing legal and accounting services solely to ensure compliance with the Act is exempt from the definition of contribution at 2 U.S.C. §431(8)(B)(ix), but amounts paid for these services are reportable under 11 CFR 104.3(h). Therefore, any of the organizations you have identified in your request could provide these services, subject to the cited regulations, without making a "contribution" to the Committee. See 11 CFR 100.7(b)(14) and 114.1(a)(2)(vii); and Advisory Opinion 1997-15.

1 total amount of time such space is used for all activities. Photocopying charges will be  
2 paid at a fixed amount per page that reflects ONS's actual cost of providing photocopying  
3 machines and supplies. Telephone charges will be reimbursed by paying ONS the actual  
4 cost of any long distance charges plus a portion of the base monthly charge determined by  
5 the same allocation method used to determine rent. As noted above, all of the  
6 administrative expenses will be paid solely from contributions received by the  
7 Committee.

8           Given the above arrangements and background of the organizers, you request  
9 confirmation that none of the following professional or trade associations with which they  
10 are associated will be considered connected to the Committee: Association of  
11 Community Cancer Centers, Oncology Nursing Society, Oncology Nursing Foundation,  
12 Oncology Nursing Certification Corporation, Oncology Education Services, Inc.,  
13 American College of Surgeons, Illinois Medical Oncology Society.

#### 14 **ACT AND COMMISSION REGULATIONS**

15           The Act and Commission regulations provide that a corporation, including a  
16 non-stock corporation, may make payments to establish, administer, or solicit  
17 contributions to, a separate segregated fund ("SSF") to be utilized for political  
18 purposes without a resulting contribution or expenditure. 2 U.S.C. §441b(b)(2)(C);  
19 11 CFR 114.1(a)(2)(iii). A corporation that directly or indirectly establishes,  
20 administers, or financially supports a political committee is the connected  
21 organization of that committee. 2 U.S.C. §431(7); 11 CFR 100.6(a). The connected  
22 organization and its SSF are subject to restrictions as to the category of persons who

1 may be solicited for contributions to the committee. 2 U.S.C. §441b(b)(4)(A) and  
2 (C); 11 CFR 114.5(g)(1) and 114.7(a).<sup>2</sup>

### 3 APPLICATION TO PROPOSAL

4 The Act and Commission regulations "do not prescribe qualifications on the  
5 individuals who may establish, organize, and direct a non-connected political  
6 committee; nor do they necessarily prohibit individuals who have some association  
7 with a corporation, labor organization, or trade association from such activity."  
8 Advisory Opinions 1998-11, 1997-26 and 1997-15. When the Commission has  
9 examined the establishment of a new non-connected political committee, the analysis  
10 has centered on whether the proposed non-connected committee receives "financial  
11 support," within the meaning of section 100.6 of Commission regulations, from  
12 another entity. Further, the Commission has considered the role which members or  
13 controlling individuals of other organizations play in the creation and operation of the  
14 proposed non-connected political committee. This is necessary to determine if their  
15 roles create a circumstance where the committee is being directly or indirectly  
16 administered or established by another entity, again, within the terms of section 100.6.

17 The Commission concludes that in the circumstances presented here, none of the  
18 organizations identified in the request (Association of Community Cancer Centers,

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<sup>2</sup> By contrast, a political committee without a connected organization may solicit any individual or person for otherwise lawful contributions, provided the solicitation itself is not unlawful. (Contributions may not be solicited from foreign nationals or Federal Government contractors. 2 U.S.C. §§441c, 441e.) All payments for its establishment, administration, and solicitation costs, however, are contributions subject to the limits and prohibitions of the Act, unless another exception applies. See citations above.

1 Oncology Nursing Society, Oncology Nursing Foundation, Oncology Nursing  
2 Certification Corporation, Oncology Education Services, Inc., American College of  
3 Surgeons, or Illinois Medical Oncology Society) would be the connected organization of  
4 the Committee for Quality Cancer Care. This conclusion is premised on two factors:  
5 first, that none of these organizations in the circumstances you present would be  
6 providing financial support to the Committee, and second, that the diversity of  
7 membership in the Committee's leadership indicates an organizational independence  
8 from any of the entities identified above.

9 As to the first factor, the financial support of the Committee, the Commission  
10 relies on your statement that the initial costs of establishing the Committee will be  
11 paid "solely from contributions received by the Committee." Also important is your  
12 assurance that while office space will be shared with ONS, the Committee will pay  
13 for the actual cost of all rent and other administrative expenses.<sup>3</sup> Your description of  
14 the allocation method for costs seems commercially reasonable, and the Commission  
15 assumes that the ultimate amount of each expense will conform to the usual and  
16 normal charge which the committee would have paid to obtain use of the space or to

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<sup>3</sup> This would be consistent with past situations where the Commission has permitted the formation of a non-connected political committee that is organized by individuals associated with one entity where that entity is compensated for any services it provides to the non-connected committee. *See* Advisory Opinions 1997-26, 1997-15, 1995-38 and 1991-37. Specifically, you state that rental costs would be determined using an allocation method whereby the amount of time that the space is devoted to Committee activities will be compared to the total amount of time that the space is used for all activities. This is similar to the formula approved in Advisory Opinion 1991-37. In Advisory Opinion 1991-37, when a corporation and a non-connected political committee wished to share administrative expenses and the rental of office space, the Commission stated that a reasonable method of determining the respective portion of these expenses would be to apply the percentage of time spent on campaign activities to the total amount of time spent for business and campaign purposes.

1 obtain the administrative services, with payment made by the Committee within a  
2 commercially reasonable time period. *See* 11 CFR 114.9 (c) and (d).<sup>4</sup>

3 As to the second factor, the organizational independence of the Committee,  
4 the Commission notes that several individuals from the identified entities will  
5 participate in the formation of the Committee. Individuals affiliated with a particular  
6 organization will not, however, form the majority of the Committee's Board. For  
7 example, the proposed Executive Director of the Board, Ms. Pearl Moore, is also the  
8 Chief Executive Officer of ONS. However, out of the five Board members, she will  
9 be the only one who holds a position with ONS. Further, although two of the  
10 organizers are associated with ACCC, only one of them, Dr. Lee Mortenson, holds a  
11 position on the board of ACCC. That individual will assume the position as treasurer  
12 of the Committee. However, his activities with respect to the Committee will be  
13 conducted, you explain, completely separate from those he conducts on behalf of the  
14 ACCC.<sup>5</sup>

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<sup>4</sup> The Commission notes your use of the term "actual cost." According to public sources, ONS is a nonprofit Pennsylvania domestic corporation. To avoid the making of prohibited corporate contributions, an individual who uses corporate facilities to produce material on behalf of a committee or candidate must reimburse the corporation within a commercially reasonable time for the normal and usual charge for producing such materials in the open market. Similarly an individual who makes use of corporate facilities (beyond incidental use as defined in 11 CFR 114.9(a)) such as telephones, typewriters and office furniture for activity in connection with a Federal election are required to reimburse the corporation within a commercially reasonable time for the normal and usual amount of the rental charge for such use. 11 CFR 114.9(d). Commission regulations also define "usual and normal charge" as the price of those goods in the market from which they would have been purchased at the time of the contribution 11 CFR 100.7(a)(1)(iii)(B). Usual and normal charge for services is defined as the hourly or piecework charge for those services at a commercially reasonable rate prevailing at the time the services were rendered. *Id.* See also 114.2(f)(2)(i)(A). Notwithstanding your use of the term "actual cost", the formula you suggest for allocation of expenses is consistent with past opinions. See Advisory Opinion 1991-37 and footnote 3 above.

<sup>5</sup> As you note in the request materials, the Commission has permitted the formation of non-connected political committees where only one officer from an organization holds a position on the board of the political committee. *See*, for example, Advisory Opinion 1997-26.



