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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

2000 OCT -5 A 10: 02

October 5, 2000

## AGENDA ITEM

For Meeting of: 10-12-00

### MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon   
Staff Director

FROM: Lawrence M. Noble   
General Counsel

N. Bradley Litchfield   
Associate General Counsel

Jonathan M. Levin   
Senior Attorney

SUBJECT: Revised Draft Advisory Opinion 2000-26

Attached is a revised draft of the subject opinion for the Commission's further consideration on the October 12 agenda. This revised draft replaces Agenda Document No. 00-97 which was discussed on September 28.

The changes in this draft are made pursuant to the Commission's direction that OGC should redraft the opinion to conclude that the ballot access exemptions would apply in the circumstances presented. Accordingly, the most extensive and significant changes in this revised draft, as compared to the September 28 document, are found on pages two and four.

Attachment

1 ADVISORY OPINION 2000-26

2

3 Joel Deckard

4 Citizens for Deckard

5 4263 Losco Road

6 #1326

7 Jacksonville, FL 32257

8

9 Dear Mr. Deckard:

**DRAFT**

10 This responds to your letter dated September 5, 2000, requesting an advisory  
11 opinion concerning the application of the Federal Election Campaign Act of 1971, as  
12 amended ("the Act"), and Commission regulations to the payment by a State party  
13 committee to a Federal candidate of an amount equal to a State party assessment that the  
14 candidate previously paid to the State.

15 ***Background***

16 You are the Reform Party nominee in the State of Florida for the United States  
17 Senate, and Citizens for Deckard ("the Deckard Committee") is your principal campaign  
18 committee.<sup>1</sup> Florida State law requires that each person seeking to qualify for the ballot  
19 for nomination or election to any office (except for persons who wish to file by the  
20 petition method) shall pay a qualifying fee to the Florida Department of State, consisting  
21 of a filing fee, an election assessment, and a party assessment. The qualifying fee totals  
22 six percent of the annual salary of the office sought, including two percent of the salary  
23 for the party assessment. Fla. Stat. Ann. §99.092 (West 2000). The qualifying fee must  
24 be paid between 120 and 116 days prior to the primary (held this year on September 5).  
25 Fla. Stat. Ann. §99.061(1). After deducting a seven percent surcharge from the party  
26 assessment, the Department of State remits the remainder of the party assessment to the  
27 State committee of the candidate's political party. See Fla. Stat. Ann. §§99.103(2) and  
28 215.20. As an alternative to paying the party assessment to the Department of State, the  
29 candidate may pay the assessment directly to the party. Then, when the candidate pays  
30 his filing fee and election assessment, he submits to the State the original or signed

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<sup>1</sup> Citizens for Deckard filed its statement of organization with the Commission on May 21, 1999.

1 duplicate of the receipt for the party assessment. *See Fla. Stat. Ann. §99.092(1); see also*  
2 *§99.021(b).*

3 In early May 2000, the Deckard Committee paid a party assessment to the  
4 Department of State totaling \$2,734.<sup>2</sup> After deducting the seven percent surcharge, the  
5 Department of State remitted \$2,542 to the Florida Reform Party Executive Committee  
6 (“State Committee”) in late June, 2000. On July 1, the State Committee sent a check in  
7 that amount to the Deckard Committee. At the time, both the State Committee and the  
8 Deckard Committee considered this to be a refund to the candidate of the assessment  
9 levied on behalf of the party and exempt from the definition of “contribution” because the  
10 party assessment was a ballot access fee.

11 Documents submitted by you and by the treasurer of the State Committee, as well  
12 as reports filed by the State Committee under Florida State law, present an “audit trail” of  
13 the movement of the funds. When the Department of State remitted \$2,542 to the State  
14 Committee, it also remitted the party assessments paid by the other two Reform Party  
15 Federal candidates on the ballot in Florida for a total of \$7,627, and stated in a letter that  
16 this amount represents the filing fees for the Federal candidates for the ballot.<sup>3</sup> Your  
17 request includes a document issued by the Department of State disclosing that this  
18 remittance represents three distributions to the party of \$2,542 from the assessments paid  
19 by each of the candidates. The party executive committee met by teleconference on June  
20 26 and decided to “rebate the states portion to the candidates by individual check in the  
21 appropriate amounts.” On July 1, the State Committee sent \$2,542 to each of the three  
22 Federal candidates, including you. It appears that the last funds received by the State  
23 Committee before sending the funds to each of the candidates was the \$7,627 remittance,  
24 and that the State Committee made no disbursements between the receipt of the  
25 remittance and the disbursements to the Federal candidates.

26 After discussions in August with the Commission’s Office of General Counsel as  
27 to how to characterize and report the payment to the Deckard Committee, the treasurer of

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<sup>2</sup> Along with the party assessment, Citizens for Deckard also paid a filing fee and an election assessment. The total payment made was \$8,202.

<sup>3</sup> All dollar figures in this opinion are stated without cents, which affects the total of the party assessments remitted by the State and sent to the three Reform Party Federal candidates.

1 the State Committee sent you a letter, dated August 25, stating that the July 1 payment  
2 was an excessive contribution to the Deckard Committee and that the amount in excess of  
3 the Act's limits should be refunded to the State Committee. You ask whether the July 1  
4 payment from the State Committee to the Deckard Committee should be characterized as  
5 a contribution and thus subject to the Act's limits. You state that, pending the issuance of  
6 an advisory opinion, the Deckard Committee is withholding a refund of the amount in  
7 excess, but will refrain from spending that amount.

#### 8 *Act and Commission regulations*

9 Under the Act and Commission regulations, the term "contribution" is defined as  
10 any gift, subscription, loan, advance, or deposit of money or anything of value made by  
11 any person for the purpose of influencing any election for Federal office, and the term  
12 "expenditure" is defined as any purchase, payment, distribution, loan, advance, deposit or  
13 gift of money or anything of value, made by any person for the purpose of influencing  
14 any election for Federal office. 2 U.S.C. §431(8)(A)(i) and 431(9)(A)(i); 11 CFR  
15 100.7(a)(1) and 100.8(a)(1). The Act and regulations provide for exceptions to these  
16 terms with respect to certain payments related to ballot access. An exception to the term  
17 "contribution" applies to payments made by a candidate or his authorized committee as a  
18 condition of ballot access, and to payments received by any political party committee as a  
19 condition of ballot access. 2 U.S.C. §431(8)(B)(xiii); 11 CFR 100.7(b)(18). An  
20 exception to the term "expenditure" applies to amounts transferred by a party committee  
21 to another party committee or payments made to the appropriate State official of fees  
22 collected from candidates or their authorized committee as a condition of ballot access. 2  
23 U.S.C. §431(9)(x); 11 CFR 100.8(b)(19).

#### 24 *Analysis*

25 Under the exceptions set out in the Act and regulations, the payment of the party  
26 assessment fee by the Deckard Committee to the Florida Department of State, which was  
27 then remitted to the State Committee, would not be an expenditure by the Deckard  
28 Committee or a contribution by the Deckard Committee to the State Committee. 2  
29 U.S.C. §431(8)(B)(xiii) and (9)(B)(x); 11 CFR 100.7(b)(18) and 100.8(b)(19); *see also*  
30 Advisory Opinion 1988-33.

1 Under the specific circumstances presented, it appears that the refund of the  
2 assessments to the Deckard Committee was merely the end point of several transactions  
3 made in the ballot access payment process. The payment by the Deckard Committee  
4 through the State of Florida to the State Committee was required by State law for ballot  
5 access, and the funds disbursed by the State Committee to the Deckard Committee, which  
6 were not contributions or expenditures to begin with, were a pass-through of the same  
7 amount (minus the surcharge) initially paid by the Deckard Committee. Moreover,  
8 although a committee's consistent policy is often irrelevant to whether a particular  
9 transaction is lawful, it is somewhat significant here that the payment by the State  
10 Committee was part of a policy to refund party assessments to all of the Reform Party  
11 Federal candidates on the Florida ballot who paid the assessment.<sup>4</sup> Under the  
12 circumstances, the Commission views the payment by the State Committee as a refund  
13 tied to the ballot access process, and not a contribution; the Deckard Committee should  
14 report it as a receipt offset to operating expenditures. See 11 CFR 104.3(a)(3)(ix)(A) and  
15 (4)(v), and 104.8(d)(4).

16 The Commission emphasizes that its characterization of the State Committee's  
17 payment to the Deckard Committee as a refund tied to the ballot access process, and not a  
18 contribution, is based on the specific circumstances presented. This opinion should not  
19 be construed as generally exempting, from the definition of "contribution," payments or  
20 reimbursements to an authorized political committee or candidate to assist the candidate  
21 in paying ballot qualifying fees and assessments.

22 This response constitutes an advisory opinion concerning the application of the  
23 Act and Commission regulations to the specific transaction or activity set forth in your  
24 request. See 2 U.S.C. §437f.

25 Sincerely,

26  
27 Darryl R. Wold  
28 Chairman  
29

30 Enclosure (AO 1988-33)

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<sup>4</sup> Information provided by the treasurer of the State Committee indicates that the committee also refunded the party assessments to all of the Florida Reform Party non-Federal candidates who paid them.