



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**ADVISORY OPINION 2004-08  
CONCURRING OPINION**

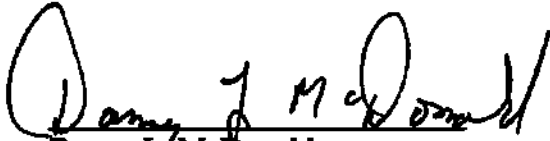
**COMMISSIONER DANNY L. MCDONALD**

In Advisory Opinion 2004-08, the American Sugar Cane League (ASCL), a nonprofit corporation representing Louisiana sugar cane growers and processors, asked the Commission to approve a severance package for its President and General Manager, Charles Melancon, who was resigning this position after eleven years to become a candidate for Federal office. As recommended by the Office of General Counsel, the Commission approved ASCL's proposed severance for Mr. Melancon by a vote of 4-2. Although I previously have not sanctioned arrangements of this kind without a formal, written policy, for the reasons discussed herein, I voted to approve the package for Mr. Melancon.

ASCL, a small organization employing five people, has no employee handbook and none of its employees has a written employment contract. In particular, there is neither a written policy regarding severance packages for departing employees nor a specified formula for calculating such benefits. Despite the absence of a written policy, however, four of the seven employees who have left employment with ASCL since 1987 received severance packages. While the specific severance benefit components varied among the four former employees, each of them had ten or more years of service with ASCL and differing levels of responsibility with the organization. Of the three departing employees who did not receive a severance, one retired from ASCL and received retirement benefits, while the other two had less than one year of service in addition to other factors.

Notwithstanding the absence of a formal written policy governing severance packages, ASCL began providing such benefits to its employees in 1987. And, with the few exceptions noted here, all departing employees have received severances since that time. In my view, this longstanding practice is the equivalent of a formal policy, not one that was created solely for the benefit of this particular employee-candidate. *See* Advisory Opinion 1992-3. Additionally, given Mr. Melancon's tenure with ASCL and his level of responsibility with the organization, the severance package, one year's salary with no accompanying benefits, is compensation resulting from his ASCL employment, independent of his Federal candidacy. *See* 11 C.F.R. 113.1(g)(6).

Without question, I share the concerns expressed by Vice Chair Weintraub and Commissioner Thomas regarding ASCL's lack of a formal, written policy. In fact, as noted herein, I have taken this position alongside Commissioner Thomas throughout my tenure at the Commission. Nevertheless, in this limited circumstance, I concluded ASCL's standard practice of providing severance packages to departing employees is the equivalent of a formal policy.



Danny L. McDonald  
Commissioner

S-06-04